IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

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**No.**

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ELMER MICHAEL WALSH, SHERIFF, COOK COUNTY, ILLINOIS,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA, EX REL. RALPH E. WHITE,

*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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BLEED THROUGH

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IN THE

# United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

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## No. 9635

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THE UNITED STATES OF AMERICA EX REL.,
RALPH E. WHITE,
*Petitioner-Appellee,*

VS.

ELMER MICHAEL WALSH, SHERIFF, COOK COUNTY, ILLINOIS,
*Respondent-Appellant.*

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Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of April (it being the 5th day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-Eight and of the Independence of the United States of America, the 172nd year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.

Roy H. Johnson, Clerk.

Thomas P. O'Donovan, Marshal.

Thursday, April 15, 1948.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

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2 IN THE DISTRICT COURT OF THE UNITED STATES.
For the Northern District of Illinois,
Eastern Division.

Ralph E. White,
*Petitioner,*
vs.
Elmer Michael Walsh, Sheriff of Cook County, Illinois,
*Respondent.*
No. 47-C-1832.

Be It Remembered, that, on to-wit the 19th day of December, 1947, the above-entitled action was commenced by the filing of the following Petition for Writ of Habeas Corpus in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, in words and figures following to-wit:

3 IN THE DISTRICT COURT OF THE NORTHERN DISTRICT AT CHICAGO, ILLINOIS.

* * (Caption—47-C-1832) * *

## PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable, the Judges of the United States District Court of the Northern District, Eastern Division at Chicago, State of Illinois:

Greetings:

1. Your petitioner, Ralph E. White, respectfully shows unto the court that he is a citizen of the United States of America, a resident of the State of Illinois, the County of Cook and of the Village of Lyons, a municipal subdivision in said Cook County; that he is 47 years of age, married, and resides with his wife and children in said Village, and has resided in said Village for upwards of seventeen (17) years.

2. That he is at present and for several years past has been a Civil Service employee of the United States Veterans Administration in the City of Chicago.

4 3. Petitioner shows that he is now unlawfully detained and imprisoned by the Sheriff of Cook County within the jurisdiction of this Honorable Court. That the petitioner is being unlawfully detained under the following circumstances:

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4. That in April 1941, he was elected to the office of Village Clerk of said Village of Lyons, qualified for said office and assumed the duties thereof on May 1, 1941, and functioned as such official until his successor was elected and qualified on April 30, 1945.

5. That as an incumbent of the office of Village Clerk, he was charged with the duty of arranging the details of Village elections, preparation of election notices, and furnishing ballots and election paraphernalia to the Judges and Clerks of election, and that such duties are fixed and governed by Chapter 46, paragraph 10 of the Election Code of the State of Illinois, and the provisions of the election laws applicable to said Office of Village Clerk.

6. That pursuant to the statute, he gave, by posting and publication, notice of the annual Village election to be held in said Village on April 17, 1945.

7. That for the annual Village election in the year 1945, there were filed in his office two tickets as follows:

8. On March 13, 1945, the Regular Peoples Party filed certificates of nomination for:

Lyman F. Martin for President
Cecil Grgurich for Village Clerk
Joseph Cerny for Village Trustee
Henry J. Metz for Village Trustee
John F. Gazarek for Village Trustee
Frank J. Kucera for Police Magistrate

and in said certificate, stated that said persons were nominated at "A caucus of qualified voters of the Regular Peoples Party aforesaid, held at Sokol Hall on the 8th day of March, A. D. 1945, for the purpose of nominating candidates for officers to be voted for at the election to be held Tuesday, the 17th day of April, 1945." A copy of said certificate is hereby made a part hereof and marked Petitioner's Exhibit 1.

9. And also attached to said certificate was the further certificate of the presiding officer and secretary of such caucus that at the last preceding general election "The Regular Peoples Party polled more than five per cent (5%) of the entire vote cast in said Village of Lyons at said election."

10. Also on March 13, 1945, there was filed in Relator's office by the Regular Progressive Citizens Ticket certificates of nomination of:

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Theofil T. Bulat for President
Joseph F. Janda for Village Clerk
Matt Jadro for Village Trustee
James Landa for Village Trustee
Henry J. Toepper for Village Trustee
James A. Cihlar for Police Magistrate

and in said certificate, stated that said persons were nominated at:

"A caucus of qualified voters of the Village of Lyons held at 7801 W. Ogden Avenue, Lyons, Illinois, on the 12th day of March, A. D. 1945, for the purpose of nominating candidates for officers to be voted for at the election to be held Tuesday, April 17, 1945."

11. And also attached to said certificate was a further certificate that stated that the Regular Progressive Citizens Ticket was not an established political party, and did not become such at the last preceding general election. A copy of said certificate is made a part hereof and marked Petitioner's Exhibit 2.

12. That on March 17, 1945, written objections were filed in this Petitioner's office to the nominating papers of said Regular Peoples Party on the ground that the population of the Village of Lyons was in excess of 5,000, and that an existing political party could not, under the election law, nominate candidates by caucus in a municipality with a population of over 5,000. A copy of said objectors' petition is made a part hereof and marked Petitioner's Exhibit 3.

6 13. That the election code creates a Municipal Officers Election Board composed of the President, Clerk, Village Trustee Senior in service, with the President as the Chairman, and in case the President is a candidate for re-election, then the County Judge should serve in his place.

14. That the President, Theofil T. Bulat, was a candidate for re-election, and Edmund K. Jarecki, then County Judge, became by statutory designation member and Chairman of the said Municipal Officers Election Board; that as Village Clerk, your petitioner became a member thereof, and Louis Hoffman as Village Trustee, Senior in service, was the third member of such Board.

15. That immediately upon receipt of such objection to said nominating papers, Petitioner, as such Clerk, notified said Edmund K. Jarecki of the facts as aforesaid, and

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asked him as such Chairman to call a meeting of said Board to hear said Objections, a copy of said notice sent to Jarecki is made a part hereof and marked Petitioner's Exhibit 3A.

16. That thereupon, said Edmund K. Jarecki, gave notice of hearing of such objections at his Court Room on March 23, 1945, at 10:00 A. M. in Room 603 in the County Court House to all interested parties. A copy of said notice is made a part hereof and marked Petitioner's Exhibit 4.

17. That on March 23, 1945, the said Officers Municipal Election Board met, organized, heard said objections, voted to sustain the objections, and adjourned to meet again on March 27, 1945, to further perform their duties. A copy of this transcript of the hearing is made a part hereof and marked Petitioner's Exhibit 5.

18. The day prior to said meeting, March 22, 1945, a mandamus petition was filed in the Circuit Court of Cook County, Case No. 45-C-2198, by the candidates on the Regular Peoples Party ticket against said Edmund K. Jarecki, as Chairman of said Officers Municipal Election Board, praying that the Court direct said Jarecki to return all papers to the Village Clerk of the Village of Lyons without further hearing or consideration thereof; and in
7 amendment to said petition, it was charged that Petitioner was not Village Clerk of the Village of Lyons, and that one Joseph Janda was such Village Clerk. A copy of said Mandamus complaint and amendment is made a part hereof and marked Petitioner's Exhibits 6 and 6A.

19. That said Edmund K. Jarecki appeared in said mandamus suit, but did not defend against said mandamus petition, otherwise than to demur *ore tenus* to said petition.

20. That on March 26, 1945, the Circuit Court entered a mandamus order upon said petition taken as confessed, directing said Jarecki to enter an order on the proceedings of said Board to the effect that it was not lawfully constituted, and should be dissolved and that said Jarecki return all papers connected with said hearing to the Village authorities without any action thereon; that pursuant to said order, said Jarecki returned the said papers to this Petitioner. A copy of said mandamus judgment is made a part hereof and marked Petitioner's Exhibit 7. A copy of

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Jarecki's letter returning said papers is made a part hereof and marked Petitioner's Exhibit 8.

21. That on March 25, 1945, the Officers Municipal Election Board again met pursuant to adjournment, and said Jarecki refused to further participate in the work of said Board; that Petitioner and said Louis Hoffman proceeded with their duties as members of such Board, and recorded the action of said Board taken on March 23, 1945, sustaining said objections, and made and passed a written resolution recording the record of the findings and actions of said Board; and therein Petitioner was directed to notify all parties concerned of its action and decision sustaining said objections; and thereupon the said resolution and records of said Board were filed in the office of the Village Clerk of said Village, and all interested parties were forthwith given notice of the action of said Board. A copy of said resolution is made a part hereof and marked Petitioner's Exhibit 9.

8 22. That having finished its work, the said Officers Municipal Election Board adjourned *sine die.*

23. *Petitioner further charges and says that the judgment order of said Circuit Court was void for want of jurisdiction of subject matter, and parties and for having exceeded the powers of the court in mandamus and the jurisdiction in mandamus; that the court had no jurisdiction to try title to the office of Village Clerk, and no jurisdiction to command the Board how it should perform the duties of its office; and had no jurisdiction over the three-man Board by obtaining jurisdiction over one member only; and that said judgment could furnish no legal base for the mandamus proceeding filed in the Superior Court under the mittimus of which Petitioner is detained.*

24. (A) That rule to show cause was entered in the said Circuit Court against Petitioner White and Louis Hoffman, the third member of said Lyons Municipal Electoral Board. A copy of said rule is made a part hereof and marked Petitioner's Exhibit 10.

25. That Petitioner and said Hoffman filed their motion to dismiss said rule in the Circuit Court. A copy of said motion is made a part hereof and marked Petitioner's Exhibit 11.

26. That Petitioner and said Hoffman were discharged of said rule after hearing in Circuit Court by Judge Harry M. Fisher.

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26. That relying upon the action of said Officers Municipal Election Board, this Petitioner, on April 7, 1945, prepared and posted in several voting precincts, sample specimen ballots to be used for said election, as required by statute, and on April 9, 1945, the official ballots were ordered printed and made ready for said election. A copy of said election ballot is made a part hereof and marked Petitioner's Exhibit 12.

27. That five days before said election to be held on April 17, 1945, Petitioner, as Village Clerk, posted a list of registered voters of said Village as required by the Election Code of Illinois.

9 28. That on April 5, 1945, the said candidates on said Regular Peoples Party ticket filed their petition for mandamus in the Superior Court of Cook County No. 45-S-6174 against your petitioner, and Joseph Janda, alleging that by authority of the mandamus judgment of the Circuit Court, aforesaid, the said Edmund K. Jarecki had dissolved said Officers Municipal Election Board, and returned the election papers and objections to the Village authorities which were, it was alleged, on March 27, 1945, received by Petitioner or said Janda, acting as Village Clerk. A copy of said mandamus petition is made a part hereof and marked Petitioner's Exhibit 13.

29. That in said mandamus petition, it was alleged that said mandamus order of the Circuit Court was still in full force and effect, and not appealed from or in any other way changed, suspended or modified.

30. That in said Superior Court mandamus petition, it was further alleged that by virtue of the force and effect of said Circuit Court mandamus judgment, and the laws in the Election Code (chapter 46, sections 1-16 Election Code) and all other laws concerning the printing and furnishing of ballots by Village authorities that it became the duty of the Village Clerk of the Village of Lyons to print the names of said candidates of the Regular Peoples Party on the official ballot for said election, which, they allege, they had demanded be done.

31. The Petitioner, and one Janda, party to the suit in the Superior Court Case No. 45-S-6174, filed their petition for Change of Venue alleging generally that they could not receive a fair and impartial trial in this cause, and praying that a change of venue be made in the said cause. A copy

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of said change of venue petition is made a part hereof and marked Petitioner's Exhibit 14.

32. Petitioner further alleges that the court denied the change of venue, and entered an order, a copy of which order is made a part hereof and marked Petitioner's Exhibit 15.

33. Petitioner further avers that he and Joseph F. Janda filed a petition to dismiss the cause, alleging that the court did not have jurisdiction in mandamus order in said cause, or rendering judgment in the said cause; that the court could not ignore the rules of the mandamus itself which are binding upon the Petitioner as well as upon the court; that the Circuit Court judgment order in Case No. 45-C-2198 was void and lacking in jurisdiction of the subject matter as well as of the parties; that the Superior Court could not base its judgment upon the order of the Circuit Court for the reason that the order in the Circuit Court was void. A copy of said petition to dismiss is made a part hereof and marked Petitioner's Exhibit 16.

34. That said petition to dismiss was overruled and defendants ordered to answer instanter.

35. That Petitioner filed his answer to said Superior Court mandamus petition setting forth therein a full history of said proceedings, the filing of said nomination papers, the filing of objections thereto, the organization of said Municipal Officers Election Board; the notice to interested parties of the hearing; a transcript of the proceedings of the Board, showing its action sustaining the objections to said ticket; the full proceedings in the said Circuit Court mandamus case and its judgment; the refusal of said Jarecki to function further as a member of said Board, the further action of said Board in recording its decision, and the reliance of Petitioner upon the action of said Officers Municipal Election Board. A copy of said Answer (minus exhibits) is made a part hereof and marked Petitioner's Exhibit 17.

36. Petitioner further answering said Superior Court mandamus petition, and as a defense thereto, alleged that the said mandamus judgment of the Circuit Court was not binding upon Petitioner, and said Louis Hoffman denied that said Edmund K. Jarecki had any right or power to bind Petitioner and said Hoffman as members of said Officers Municipal Election Board by entering his appear-

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ance in said cause, and confessing the allegations of the complaint;

11 *And Petitioner further answering, charged that the proceedings in said Circuit Court mandamus proceedings were null and void in that their objective was to destroy the duties and obligations of the Officers Municipal Election Board; and in that said judgment sought to restrain the said Election Board from doing its duty as an Executive branch of the State Government which in the execution of its duties is of equal dignity with the Legislative and Judicial branches of the State Government.*

37. It was further answered that the said Circuit Court mandamus order was void as being contrary to the express provisions of the Statute creating said Electoral Board.

38. It was further answered that the decision of the said Electoral Board constituted an adjudication of the issues before it and was *res adjudicata* thereof.

39. It was further answered that the said Circuit Court mandamus order was void for want of jurisdiction over the said Officers Municipal Election Board in that only one member was made a party thereto, and that said member had no power or duty which the Court could direct and could only act in conjunction with the other members of such Board, and as a part of a majority thereof.

40. That without hearing any evidence, or giving consideration to said defenses, the said Superior Court on April 13, 1945, entered its mandamus order directing Petitioner to recognize and use the nomination papers of said Regular Peoples Party, and to print the names of its candidates upon the official and sample ballots to be furnished and used for said Village election; and to cancel and destroy all ballots that may have been printed theretofore for said election; and that the Clerk of the Court return to the Lyons Village Clerk the impounded certificates of nomination of the said Regular Peoples Party candidates. A copy of the Superior Court mandamus judgment is made a part hereof and marked Petitioner's Exhibit 18.

12 41. That the said mandamus order of the Superior Court did direct the issuance of a mandamus writ, but none was ever served upon Petitioner.

42. That on April 18, 1945, the day after the date of said election, a rule to show cause why he should not be held in contempt of said Superior Court for failure to obey

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its mandamus order was entered and on May 31, 1945, this Petitioner filed his answer to said rule. A copy of said rule is made a part hereof and marked Petitioner's Exhibit 19.

43. That answering said rule, Petitioner alleged that the Superior Court had no power to disregard the proceedings of the Electoral Board, and hold such proceedings for naught or to disregard the provisions of Chapter 46, section 10 of the Revised Statutes pertaining to the Officers Municipal Electoral Board. A copy of the Answer to said rule is made a part hereof and marked Petitioner's Exhibit 20.

44. Further answering said rule, it was alleged that the Superior Court had assumed jurisdiction over the subject matter of said suit where it had none, and had ordered Petitioner to disregard provisions of the statutes.

45. Petitioner further avers that the court on May 29, 1945, entered an order allowing a Twenty-five Hundred Dollar ($2500) Appeal Bond, making the same a supersedeas. A copy of said order is made a part hereof and marked Petitioner's Exhibit 21.

46. Thereafter, on, to-wit, June 1, 1945 petitioners in the Superior Court Case No. 45-S-6174 moved to set aside the Appeal Bond and deny supersedeas.

47. That the Court allowed said motion, reversing itself.

48. Other and further defenses urged in the Answer to said rule were:

49. That Petitioner was obligated by statute to abide by and comply with the ruling of the Election Board to all intents and purposes, and that the Superior Court had no jurisdiction to undo or set aside the decisions of the Electoral Board.

13 50. That the Superior Court mandamus order was void in that it directed the performance of a series of acts contrary to the rulings of the Election Board.

51. That the Superior Court had no power to review the decision of the Election Board officials, who were officers having power to decide purely political questions.

52. That the Superior Court had no jurisdiction whereby to require Petitioner to violate the election laws, and to do an illegal act in violation of law or his official oath.

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53. That the mandamus judgment of the Superior Court is null and void in that it is a review of the rulings and findings of a statutory board of equal dignity with the Judicial branch of the Government, and whose acts of discretion are not reviewable in an action of mandamus.

54. *That the said Superior Court mandamus judgment is an invasion by the court of the Executive department of the State Government and is not merely an erroneous decision or order, but is wholly void and not binding on Petitioner.*

55. That mandamus had no jurisdiction to create new duties, nor compel the performance of illegal acts, but only to enforce legal duties where the performance of legal duties is refused.

56. The court upon consideration of said rule and answer thereto adjudicated that Petitioner was guilty of contempt of court in failing and refusing to comply with the said mandamus order, and ordered that Petitioner be committed to the County Jail of Cook County, Illinois, for a period of six months from date of the order, unless sooner discharged.

57. That an appeal was taken from said order to the Appellate Court of Illinois for the First District, where the said cause was considered, and said judgment was affirmed, consolidated causes numbers 43493 and 43515; copies of the Appellate Court decision are made a part hereof and marked Petitioner's Exhibits 22 and 23; that the Su-
14 preme Court of Illinois, causes numbered 29770 and 29771, denied leave to apeal from said judgment of the Appellate Court, and the Supreme Court of the United States in causes number 968 and 969 likewise denied certiorari.

58. It is contended that the said Superior Court exceded its constitutional powers in rendering said judgment.

59. That notwithstanding the affirmance of said judgment by the Appellate Court, Petitioner charges that the Superior Court of Cook County did not have jurisdiction to enter said mandamus order, and that the affirmance thereof gave no jurisdiction where none existed in the beginning; and that the lack of jurisdiction is in the power of the court in a mandamus proceeding to interfere with the discretion of officials or of boards vested with exclusive jurisdiction to decide political questions or to ignore its

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rulings; that as soon as it appeared from Petitioner's pleadings that the matter was one vested by the statute exclusively in a specially created Board and that officials of said Board were insisting upon the performance of the statutory duties, instead of refusing performance thereof, the Superior Court was divested of right to proceed to judgment in said mandamus action; that the mandamus judgment, of the said Superior Court had no validity and was void; and the contempt judgment, being based upon a void mandamus order, is likewise void, and all process thereunder is likewise void.

60. That Petitioner further avers that on to-wit, the 11th day of August 1942, the President and Board of Trustees of the Village of Lyons, Cook County, Illinois, adopted a resolution, wherein the population of the Village of Lyons as well as the canvass of the census enumeration was made and entered upon the minutes and records of the said Village of Lyons. A certified copy of said resolution is made a part hereof and marked Petitioner's Exhibit 24.

61. That the said judgment directing the commitment of Petitioner to the County Jail for a period of six months is and always has been wholly void and the mittimus issued thereunder and by which Petitioner is now imprisoned is likewise wholly void; and the Petitioner is wrongfully detained and imprisoned.

15 62. That Petitioner filed a writ of Habeas Corpus in the Circuit Court of Cook County, cause No. 47-C-9719 on July 27, 1947, which hearing on said petition was continued to November 12, 1947, on which date the said petition was denied.

63. That the Petitioner herein filed a petition for leave to file an original petition for Habeas Corpus in the Supreme Court of Illinois on November 13, 1947, Supreme Court cause No. 30474.

64. That said petition for leave to file petition for Habeas Corpus and a motion in the alternative for an original petition in Mandamus to expunge the void order was denied by the said Supreme Court of Illinois on November 18, 1947.

65. That the commitment and imprisonment of Petitioner is not by virtue of any process of any Judge or Court of the United States in any case where such Court

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or Judge has exclusive jurisdiction; nor for any treason, felony or other crime committed in any other State or territory of the United States for which Petitioner ought, by the Constitution and laws of the United States, to be delivered up to the Executive power of such State or territory; nor by any unexpired decree of any civil or criminal jurisdiction; or otherwise than as herein alleged.

66. That a true copy of the mittimus under which Petitioner is held, detained and imprisoned is hereto attached as Exhibit 25 and made a part hereof, but Petitioner claims and maintains that said mittimus is now and at all times has been wholly void and that Petitioner is now held in confinement thereunder without warrant of law.

67. The Petitioner further shows that he has exhausted all of his remedies in the Courts of the State of Illinois by Appeal, Habeas Corpus, and in the alternative by mandamus to expunge (see paragraphs 47, 62 and 63 hereof).

68. Petitioner further alleges that he has been denied due process of law which is guaranteed to him by the Constitution of the United States. Article V of the Article In Addition to and Amendment of the Constitution of the United States.

16 68A. Petitioner further shows to the court that he has exhausted all the remedies including a motion in the nature of a Writ of Error Coram Nobis under section 72 of the Civil Practice Act of the State of Illinois, which motion was denied on December 19, 1947.

69. Petitioner further alleges that the said contempt proceeding is so far devoid of jurisdictional attributes as to amount to a conviction and imprisonment of petitioner, as a Citizen of the United States, without those fundamental processes constituting due process of law, and is now being held prisoner by respondent without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States and contrary to the abiding guarantees to each American Citizen found in the Constitution of the United States.

Wherefore Petitioner prays that the Writ of Habeas Corpus may be forthwith ordered issued by this court, directed to Honorable Elmer M. Walsh, Sheriff of Cook County, pursuant to the law in such case made and provided, directing and requiring him, said Elmer M. Walsh, Sheriff, as aforesaid, bring Petitioner before the court

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forthwith, together with the evidence of authority by which he assumes to imprison or detain Petitioner, so that the legality of detention of Petitioner may be judicially inquired into and determined; all to the end that Petitioner may be freed and discharged from such imprisonment.

Ralph E. White,
*Petitioner.*

Ralph E. White,
JOSEPH I. BULGER,
ODE L. RANKIN,
*His Attorneys,*
139 N. Clark St., Chicago 2, Ill.
Tel.: State 4426.

17 State of Illinois,}
County of Cook.} ss.

Ralph E. White, being duly sworn, deposes and says that he is Petitioner in the above entitled cause; that he has read the above and foregoing petition; and that he has been duly authorized to verify the foregoing Petition for Habeas Corpus; and says that the matters and things set forth in the foregoing petition are true, and believes the Petitioner is entitled to the redress sought therein.

Ralph F. White.

Subscribed and sworn to before me this 19th day of December, A. D. 1947.

Lucille W. Chapman,
(Seal) *Notary Public.*

18 APPENDIX TO PETITION FOR WRIT OF HABEAS CORPUS.

PETITIONER'S EXHIBITS 1 to 25 Inclusive.

EXHIBIT 1.

Certificate of Nomination.

To Ralph E. White Clerk of the Village of Lyons, County of Cook and State of Illinois:

19 This is to certify that a caucus of qualified voters of the Regular Peoples Party aforesaid held at Sokol Hall, on the 8th day of March, A. D. 1945 for the purpose of nominating candidates for officers to be voted for at the Election to be held Tuesday, the 17th day of April, A. D.

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1945, the following named persons, residents of said Village, were nominated for the offices set opposite their respective names, all of said candidates representing the Regular Peoples political party.

| Office to be Filled | Name of Candidate | Residence |
|---|---|---|
| Village President | Lyman F. Martin | 8024 White Avenue Lyons, Illinois |
| Village Clerk | Cecil Grgurich | 8129 White Avenue Lyons, Illinois |
| Village Trustee | Joseph Cerny | 7915 Forty-Fifth Place Lyons, Illinois |
| Village Trustee | Henry J. Metz | 8136 Ogden Avenue Lyons, Illinois |
| Village Trustee | John F. Gazarek | 8737 Ogden Avenue Lyons, Illinois |
| Police Magistrate | Frank J. Kucera | 4333 Joliet Avenue Lyons, Illinois |

Lester W. Schifelbein
of 7842 W. 42nd Place, Lyons, Illinois
Secretary

Paul O. Stednitz
of 8019 White Ave., Lyons, Illinois
Presiding Officer

20 We also certify that at the last preceding general election, in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area, the Regular Peoples party polled more than 5 per cent of the entire vote cast in said Village of Lyons at said election.

Lester W. Schifelbein
of 7842 W. 42nd Place, Lyons, Illinois
Secretary

Paul O. Stednitz
of 8019 White Ave., Lyons, Illinois
Presiding Officer

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**EXHIBIT 2.**

Certificate of Nomination.

To Ralph E. White, Clerk of the Village of Lyons, County of Cook and State of Illinois:

This is to certify that a caucus of qualified voters of the Village of Lyons aforesaid held at 7801 W. Ogden Ave., Lyons, Illinois, on the 12th day of March, A. D. 1945 for the purpose of nominating candidates for officers to be voted for at the Election to be held Tuesday, the 17th day of April, A. D. 1945 the following named persons, residents of said Village, were nominated for the offices set opposite their respective names, all of said candidates repre-
21 senting the Regular Progressive Citizens Ticket political party.

| Office to be Filled | Name of Candidate | Residence |
|---|---|---|
| Village President | Theofil T. Bulat | 7904 West 45th Place, Lyons, Illinois |
| Village Clerk | Joseph F. Janda | 8312 West 44th Place, Lyons, Illinois |
| Village Trustee | Matt Jadro | 7832 West 42nd Place, Lyons, Illinois |
| Village Trustee | James Landa | 3933 Gage Avenue, Lyons, Illinois |
| Village Trustee | Herman J. Toepper | 3951 Prescott Avenue, Lyons, Illinois |
| Police Magistrate | James A. Cihlar | 3907 Custer Avenue, Lyons, Illinois |

Mildred Soukup
of Lyons, Illinois
Secretary

Fred J. Blafke
of Lyons, Illinois
Presiding Officer

We also certify that the Regular Progressive Citizens Ticket was not an established political party, at the last preceding general election, in which such district or political subdivision voted as a unit for the

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election of officers to serve its respective territorial area.

| | |
|---|---|
| Mildred Soukup | Fred J. Blafke |
| of Lyons, Illinois | of Lyons, Illinois |
| Secretary | Presiding Officer |

**EXHIBIT 3.**

Before The

MUNICIPAL OFFICERS ELECTORAL BOARD OF THE VILLAGE OF LYONS

In re Matter of the objections to the Certificate of Nomination of the "Regular Peoples Party" for village offices of President of the Board of Trustees, Village Clerk, three Trustees, and Police Magistrate for the Village of Lyons, Cook County, Illinois.

Now comes Karl Schimmelphennig, 7948 Ogden Avenue, Lyons, Illinois, and O. H. Felton, 4301 Prescott Avenue, Lyons, Illinois, and respectfully show that they are qualified electors and duly registered voters in the Village of Lyons and state that their interest in filing the following objections is that of citizens desirous of seeing that the election laws governing nominations of candidates are properly complied with, and therefore make and herewith file the following objections to the certificate of nomination of the "Regular Peoples Party" which purports to nominate the following candidates for the offices set opposite their respective names, to-wit;

| Name of Candidate | Party or Political Principle Which They Represent | Offices to Which They Are Nominated |
|---|---|---|
| Lyman F. Martin | Regular Peoples Party | Village President |
| Cecil Grgurich | Regular Peoples Party | Village Clerk |
| Joseph Cerny | Regular Peoples Party | Village Trustee |
| Henry J. Metz | Regular Peoples Party | Village Trustee |
| John F. Gazarek | Regular Peoples Party | Village Trustee |
| Frank J. Kucera | Regular Peoples Party | Police Magistrate |

23 1. Your objectors respectfully show that in the heading of the certificate of nomination it is set forth that the abovementioned candidates represent the Regular Peoples Party.

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2. Your objectors further show that the certificate of nomination purports to be signed by Paul O. Stednitz, presiding officer, and Lester W. Schiefelbein, secretary; that the certificate of nomination also contains the following certification, to-wit:

> "We also certify that at the last preceding general election in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area, the Regular Peoples Party polled more than five per cent of the entire vote cast in said Village of Lyons at said election."

3. Your objectors further show that in the certificate of nomination of the certification thereto the Regular Peoples Party designates itself as an existing political party.

4. Your objectors further show that the last preceding general election for the Village of Lyons was held on April 20, 1943, at which time the Regular Peoples Party issued a certification of nomination for three village trustees of the Village of Lyons.

5. Your objectors further show that at the general Village election held on April 20, 1943, the Regular Peoples Party polled more than five per cent of the total votes cast in such election.

24 6. Your objectors further show that the Regular Peoples Party is an existing political party which at the general election for Village officers then next preceding a primary cast more than five per cent of the entire vote.

7. Your objectors further show that an existing political party can nominate candidates only in a primary election and not by a caucus of qualified voters or by certificates of election. No primary election was held, in compliance with Article VII of the Election Code.

8. Your objectors further show that the Village of Lyons has a population exceeding five thousand.

9. Your objectors further show that the certificate of nomination filed by the Regular Peoples Party for the nomination of the aforesaid candidates includes the name of a political party which at the general election next preceding polled five per cent or more of the entire vote cast in a municipality for which the nomination is made, contrary to Article X of the Election Code.

10. Your objectors further show that the said certificate of nomination of the Regular Peoples Party for the offices

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hereinbefore set forth contains the name and usurps the name of an established political party.

11. Your objectors further show that individual voters have no right to issue certificates of nomination under the name of an existing political party.

12. Your objectors further show that the said certificate of nomination is void and invalid and not in conformity with the provisions of the statute in such case made and provided, for the foregoing and other reasons which your objectors will more fully specify upon the hearing.

13. Your objectors further show that the electoral board designated under Article 10, Section 9, of the Election Code provides as follows:

"The municipal officers electoral board to hear and pass upon objections to the nominations of candidates for officers of cities, villages and incorporated towns shall be composed of the mayor or president of the board of trustees of the city, village or incorporated town, and the city, village, or incorporated town clerk, and one member of the city council or board of trustees, that member being designated who has served the greatest number of years as member of the city council or board of trustees, of whom the mayor or president of the board of trustees shall be chairman."

Article 10, Section 9, Subparagraph 3, provides:

"In the event that any member of the electoral board is a candidate for the office with relation to which the objector's petition is filed, he shall not act as a member of the electoral board in that instance, and his place shall be filled as follows".

14. Your objectors further show that Theofil T. Bulat, president of said Village of Lyons, Cook County, is a candidate for the office of President of said Village of Lyons, with relation to which this objector's petition is filed and the said Theofil T. Bulat is not eligible to act as a member and as chairman of the electoral board and Article 10, Section 5, Subparagraph 3 (d) of said Election Code provides that in such event the County Judge shall act as Chairman of the Municipal Officers Electoral Board.

Wherefore your objectors pray that Edmund K. Jarecki, Judge of the County Court of Cook County and Chairman of the Electoral Board require Ralph E. White, the Village Clerk of the Village of Lyons, to furnish evidence of candidacy of Theofil T. Bulat, the present President of the Village of Lyons for reelection to said office.

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Wherefore your objectors pray that the names of

| | |
|---|---|
| Lyman F. Martin | Village President |
| Cecil Grgurich | Village Clerk |
| Joseph Cerny | Village Trustee |
| Henry J. Metz | Village Trustee |
| John F. Gazarek | Village Trustee |
| Frank J. Kucera | Police Magistrate |

be stricken as nominees for the offices in the Village of Lyons set opposite to their respective names as above, and the names of said

| | |
|---|---|
| Lyman F. Martin | Village President |
| Cecil Grgurich | Village Clerk |
| Joseph Cerny | Village Trustee |
| Henry J. Metz | Village Trustee |
| John F. Gazarek | Village Trustee |
| Frank J. Kucera | Police Magistrate |

be not printed on the ballot for the election of said offices in the said Village of Lyons at the election to be held on the 17th day of April, A. D. 1945.

Karl Schimmelpfennig (Signed)
Objector
O. H. Felton (Signed)
Objector

Paul W. Brust (Signed)
Attorney for Objectors.

27 **EXHIBIT 3-A.**

Clerk's Office

VILLAGE OF LYONS
Cook County, Illinois

Ralph E. White
Village Clerk

March 17, 1945

Hon. Edmund K. Jarecki
County Judge
Cook County, Ill.

Dear Sir:

Objections to the petition for certificates of nomination of the Regular Peoples Party were filed with me today, March 17, 1945, at 5:30 P. M. by Karl Schimmelpfennig

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and O. H. Felton, both residents of the Village of Lyons and legal and registered voters thereof.

As required by law I am herewith enclosing the original certificates of nomination filed by the Regular Peoples Party on the 13th day of March, 1945, and the original and a copy of the objector's petition filed by Karl Schimmelpfennig and O. H. Felton.

I have been advised by our Village Attorney, Mr. Joseph I. Bulger that I must send these papers to you immediately by registered mail and I should notify you who the other two members of the Municipal Officers Electoral Board are. They are:

Ralph E. White, 4130 Maple Avenue, Lyons, Ill.

Louis Hoffman, 4140 Anna Street, Lyons, Ill.

Mr. Hoffman is the oldest sitting trustee in the number of years of service on the Lyons Village Board.

28 Theofil T. Bulat, President of the Village Board of Trustees of the Village of Lyons, cannot act as Chairman of the Municipal Officers Electoral Board because he is a candidate for re-election, in which event the status provides that you as County Judge shall act as Chairman of said Board.

Will you therefore please advise and notify Mr. Louis Hoffman at the above address and myself as Village Clerk as to when the hearing will be held on the objections to the certificate of nomination filed with me as above stated. I further understand from our Village Attorney that this hearing must be held not less than three nor more than five days after the receipt by you of the certificates of nomination and the objectors' Petition.

Yours very truly,
Ralph E. White (Signed)
Village Clerk.

## EXHIBIT 4.

### CALL.

To

Edmund K. Jarecki, County Judge and Louis Hoffman, Trustee of the Village of Lyons, Illinois, and Ralph E. White, Village Clerk of the Village of Lyons, Illinois, con-

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stituting the Municipal Officers Electoral Board of the Village of Lyons:

Karl Schimmelpfennig, Objector
O. H. Felton, Objector,

and the following candidates for the offices indicated:

Lyman F. Martin, Village President
29 Cecil Grgurich, Village Clerk
Joseph Cerny, Village Trustee
Henry J. Metz, Village Trustee
John F. Gazarek, Village Trustee
Frank J. Kucera, Police Magistrate

You are hereby notified that the above designated Municipal Officers Electoral Board is required by law to meet to hear and pass upon objections to the nominating petition of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois.

You are further notified that the above designated Municipal Officers Electoral Board of the Village of Lyons shall meet on Friday, the 23rd day of March, 1945 at the hour of 10:00 A. M. in Room 603 in the County Court House, commonly referred to as the County Building, located at the southwest corner of West Randolph and North Clark Streets in Chicago, Illinois, for the purpose of hearing and passing upon the nominating petition of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois, and that a call has been and is hereby made by the said above designated Municipal Officers Electoral Board for said meeting to be held at the time and place and for the purpose as aforesaid.

Dated this Nineteenth Day of March, 1945.

Edmund K. Jarecki (Signed)
County Judge of Cook County and Ex-Officio Chairman of the Municipal Officers Electoral Board of the Village of Lyons.

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30 EXHIBIT 5.

BEFORE THE MUNICIPAL ELECTORAL BOARD OF THE VILLAGE OF LYONS.

In the Matter of
The People's Regular
Party of Said Village } Election of April, 1945

Present:

Hon. Edmund K. Jarecki, Chairman;
Mr. Ralph E. White,
Mr. Louis Hoffman, Members;

TRANSCRIPT OF TESTIMONY.

The following is a transcript of testimony taken and proceedings had in the above named matter at 600 County Building, Chicago, Illinois, on the 23rd day of March, A. D. 1945, at 10:00 o'clock A. M.

Present:

Mr. Urban A. Lavery, and
Mr. Frank J. Lexa,
Representing the Regular People's Party.

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The Chairman: The objection of Karl Schimmelpfennig to the certificate of nomination of the Regular People's Party.

Are the Clerk and the other Officers here from that district? Mr. White, Clerk and Mr. Hoffman are from Lyons?

Mr. White: Yes, sir.

31 The Chairman: Sit down at the table over here with me, will you please?

They are objecting to what?

Mr. Daly: The Regular People's Party.

The Chairman: They are objecting to the petition on the ground they have too many names?

Mr. Daly: No. They object to the petition on the ground the Regular People's Party had no right to caucus in the Village of Lyons.

The Chairman: Why not?

Mr. Daly: It is a village over 5,000.

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The Chairman: It is a village over 5,000. What is the federal census?

Mr. Daly: 4,960 as of 1940. That is the last regular census.

The Chairman: That is all we are governed by?

Mr. Daly: Yes.

The Chairman: In the statutory proceedings we go by the federal census. So I am for putting the names on and let them run.

Mr. Daly: I want to point out this other party in the Village of Lyons they have also caucused.

The Chairman: They have a right to. They have less than 5,000 according to the federal census of 1940. That is the thing that governs. They may jump up or jump down, but the census governs, the federal census, you may have 6500 there.

Mr. White: There is the total registration.

The Chairman: That is right I am not saying it isn't. According to the statute I am governed by the federal census. That is the thing that determines it for the next ten years. They proceed on that basis. I am for letting the names on and let them run on the ballot. Let them run and let the people decide for or against them and putting it to a vote.

32 Mr. White: I would like to hear these objections.

The Chairman: Where are they? I am ready to act. I am not going to sit here all day for them.

Mr. Lavery: May I make a suggestion, Your Honor? I represent the people, and I object to this. There is something that just came up this morning. I think this Chairman ought to know it. The notice here purporting to be sent out by Mr. White as Village Clerk, and I have only learned this morning that for a year and a half Mr. White has resigned as Village Clerk. For the last year and a half he has been Chief of Police of the Village. He has taken his office as Chief of Police and has been sworn in as Chief of Police. Therefore, that vitiates any other proceedings here. I have only learned that this morning. I think Mr. White will admit the facts.

Mr. White: No.

The Chairman: I will tell you, that is another issue. There is only one issue before us, and that is the way we are going. If the federal census determines that village to be below 5,000, that governs.

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Mr. Lavery: There is no question about that.

The Court: I am for putting the names on the ballot. Are you for or against it?

Mr. White: Where is that census gotten from?

Mr. Daly: That is the federal census that was gotten from the Public Service Department of the Chicago Tribune.

Mr. Lexa: Or published in the Rand & McNally Atlas. That is the official census.

The Chairman: It is generally published all over.

Mr. Lavery: It is common knowledge.

Mr. Lexa: The law says you must take judicial notice.

The Chairman: This is not a court. This is an electoral board. That is why I am not sitting on the 33 bench. The Court has to take judicial notice, and I am not taking judicial notices. The Clerk tells me they got 6200. They may have 6,000 in there.

Mr. White: According to the OPA statistics there is approximately 6200, I believe.

Mr. Lavery: Let me get the section of the Cities and Villages Act, Your Honor.

Here is the section of the statute of the Cities and Villages Act.

The Chairman: We will take this right out:

(Reading:)

"Whenever in this Act any provision thereof is based upon the number of inhabitants, (the number of inhabitants) of the city or village shall be determined by reference to the latest census taken by authority of the United States or of this state, or of such city or village; and it shall be the duty 'of the Secretary of State, upon the publication of any State or United States census, to certify to each city or village the number of inhabitants, as shown by such census. Any city or village may, by ordinance, provide for the taking of a census of the population thereof, in order to determine the number of such population for any and all purposes of this Act. And the several courts in this state shall take judicial notice of the population of any city or village, as the same may appear from the latest Federal, State, City or Village census so taken."

Mr. White: State or municipality, that is the way I read it.

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The Chairman: This is technical. This is merely something to deprive a man of an opportunity to run or the public to express their wishes. I am against it. I am for the names being published.

What is the finding of the Board?

34 Mr. White: No.

Mr. Hoffman: I favor voting no.

The Chairman: What do you mean, no?

Mr. White: To be stricken from the ballot.

The Chairman: I am against it, two of the men of the village voting to keep these people off the ballot. Let it be so recorded. You have the record to that effect.

What is the next case?

Mr. Lavery: I didn't hear the vote of Mr. Hoffman.

Mr. Hoffman: No was the vote.

The Chairman: It is purely political. You can see these men are in the office there trying to keep the men off the ballot.

Mr. White: I am not interested in who is running.

The Chairman: That is all.

Mr. Lavery: If the Commissioner please, may I make a point?

The Chairman: Yes.

Mr. Lavery: I again raise the point that Mr. White is not the Village Clerk.

The Chairman: That is outside of the point in this case. Raise it in the mandamus proceedings. If you declare the Board as illegal that determines the whole question.

Mr. Lavery: I would like this, Mr. Chairman. I won't take but a moment. I would like the Chairman of this Board to suspend issuing the order here for a few days to give us an opportunity to try out this question. I think we are entitled to that.

The Chairman: When is that matter coming up there?

Mr. Lavery: It will come up Tuesday. It will not in any way effect the pending of this matter.

The Chairman: I will adjourn until Tuesday noon March 27.

Which was all of the proceedings had in the above entitled matter.)

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35 EXHIBIT 6.

In the Circuit Court of Cook County

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|---|---|
| The People of The State of Illinois Ex Rel, Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera, *Plaintiffs* | 45 C 2198 |
| *vs.* The Honorable Edmund K. Jarecki, as hereinafter designated and described, *Defendant* | |

## PETITION FOR MANDAMUS.

Come now the above named relators and petitioners by Urban A. Lavery, their attorney, and respectfully show unto the Court as follows:

1. Your relators and petitioners now are and for several years last past have been residents of the Village of Lyons in the County of Cook and State of Illinois, and citizens of the State of Illinois and of the United States, and have been during all that time, and at the time of filing this petition are duly qualified and registered electors in the said Village of Lyons and in the County of Cook and in the State of Illinois.

II. Petitioners and relators show that heretofore, and within the time provided by law, they and each of them have duly filed with the Clerk of the said Village of Lyons their Certificates of Nomination or nomination papers for the offices of President of the Village Board, by Lyman F.
36 Martin; Village Clerk; by Cecil Grgurich; Village Trustees, by Joseph Cerny, Henry J. Metz, John F. Gazarek; and Police Magistrate, by Frank J. Gucera, under the party or ticket of "Regular Peoples Party."

And your relators and petitioners further show that such Certificates of Nomination or nomination papers were duly filed in accordance with the Statutes of the State of Illinois applicable thereto, namely, Section 10-6 of Chapter 46 of the Revised Statutes of the State of Illinois.

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III. Petitioners and relators show that they bring this Petition for Mandamus to enforce their rights to have the said Certificates of Nomination or nomination papers duly respected by the election authorities of the said Village of Lyons and by all other election officials acting under the authority of the Statutes of the State of Illinois, including particularly the defendant hereinafter named.

IV. Petitioners and relators respectfully show that for the said election in the Village of Lyons above mentioned one other party ticket, and one party ticket only, was also filed with the said Clerk of the Village of Lyons, to wit, the so-called and so designated "Regular Progressive Citizens" ticket, with the result that (if the laws of the State of Illinois are duly respected concerning the matters set forth in this Petition) there would be two tickets and two tickets only at the forthcoming election in the said Village of Lyons, to wit, the ticket and the candidates represented by the names of your petitioners and relators, under the party label of "Regular Peoples Party," and also the ticket and candidates represented by the said "Regular Progressive Citizens" ticket.

37 V. Petitioners and relators show that the original Certificates of Nomination or nomination papers for both of the aforementioned tickets or parties are now in the possession and custody and control of the defendant, the Honorable Edmund K. Jarecki, and that your petitioners and relators will produce the said certificates of Nomination or nomination papers in Court at the hearing of this Petition, either by the consent of the defendant last named or by *subpoena duces tecum* issued out of this Court in accordance with law, for the inspection and consideration of the Court.

VI. Petitioners and relators further show that on or about the 17th day of March, 1945, there was filed in the office of the Village Clerk of the Village of Lyons certain purported Objections to the Certificates of Nomination or nomination papers theretofore filed in that office by petitioners and relators, a copy of the said Objections being attached to this Petition as "Exhibit A" and made a part hereof; that thereafter and on or about the 19th day of March, 1945, the Village Clerk of the Village of Lyons forwarded by registered mail to the defendant, the Honorable Edmund K. Jarecki, addressed as "County Judge, County

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Building, Chicago, Illinois," and the said defendant last mentioned only received the said registered mail enclosing—

1. A certain letter addressed by the Village Clerk to the said Honorable Edmund K. Jarecki, a true copy of which letter is attached to this Petition as "Exhibit B" and made a part hereof;

2. The complete file of papers constituting the Certificates of Nomination or nomination papers for the candidacy of petitioners and relators under the name and ticket of "Regular Peoples Party"; attached hereto as Ex-
38 hibit D and made a part hereof;

3. The complete file of papers constituting the Certificates of Nomination or nomination papers for the candidacy of the candidates appearing under the ticket of "Regular Progressive Citizens" ticket; attached hereto as Exhibit E and made a part hereof.

VII. Petitioners and relators further show that thereafter and on, to wit, the 20th day of March, 1945, the defendant, the Honorable Edmund K. Jarecki, sent a Notice or "call" to Petitioners and relators, and also to the objectors whose names are signed to the Objections, attached to this petition as Exhibit A, and to certain other persons, a copy of the said Notice or "Call" being attached hereto as "Exhibit C" and made a part of this petition; that in and by the said Notice the said defendant, the Honorable Edmund K. Jarecki, duly called a meeting of the said Electoral Board to hear the said Objections on, to wit, Friday, the 23rd day of March, 1945, in accordance with the matters set forth in the said Notice.

VIII. Relators and petitioners show that the only ground or point or matters raised and set forth in the said Objections to the Certificates of Nomination or nomination papers is the alleged contention that the Village of Lyons has a population in excess of 5,000 and therefore does not come within the provisions of Section 10-1, Chapter 45, Illinois Revised Statutes, which section, together with the succeeding sections of Article 10 of said Chapter 46, regulates and controls nominations made by Certificates of Nomination or nomination papers as distinguished from nomi-
39 nations made by Party Convention or by Party Primaries; and relators and petitioners show unto this Court that in and by the said Objections no other ground or rea-

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son whatever for objecting to the Certificates of Nomination or nomination papers of these petitioners and relators is given or made or set forth other than the said alleged ground or reason of population.

IX. Relators and petitioners show that the Village of Lyons is organized under and is regularized by the so-called "Cities and Villages Act" of the State of Illinois being Chapter 24 of the Revised Statutes of Illinois; and your relators and petitioners further show that under Section 1-9 of the said Cities and Villages Act it is provided as follows:

"Sec. 1-9. Population—Census. Whenever in this act any provision thereof is based upon the number of inhabitants, the number of inhabitants of the municipality shall be determined by reference to the latest census taken by authority of the United States or this State, or of that municipality. It is the duty of the secretary of state, upon the publication of any State or United States census, to certify to each municipality the number of inhabitants as shown by that census. And the several courts in this State shall take judicial notice of the population of any municipality as the population appears from the latest Federal, State, or municipal census so taken."

X. And relators and petitioners show that the latest and only census of the Village of Lyons, as such, is the census taken by the Federal Government in the year 1940, and that no census of the said Village of Lyons has been taken since the year last mentioned by either the Federal Government, or by the State of Illinois or by the Village of Lyons; and that as shown by the said Federal census of 1940 the population of the said Village of Lyons was less than 5,000, and was the figure of 4,960; and that such last-mentioned figure must be taken and observed for all elections to be held in the said Village until a new official census is taken either by the Federal Government or by the State of Illinois, or by the said Village.

XI. *First Ground for Mandamus.* Wherefore, petitioners and relators show as a first ground for granting the Writ of mandamus in this case—

A. That by reason of the matters and things set forth in this Petition for Mandamus the said "Objections" above described to the Certificates of Nomination or nomination papers of these petitioners and re-

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lators is based solely on legal and justiciable grounds and not on a factual ground, and that under Section 10-9 of Chapter 46 of the Revised Statutes of Illinois, concerning "Electoral Boards—Hearing on Objections," it is only matters of fact and not questions of law that can be heard and determined by any of the Electoral Boards.

B. That by reason of the matters and things set forth in this Petition for Mandamus, neither the defendant, the Honorable Edmund K. Jarecki, nor either of the other members or persons named as the two remaining members of the said Electoral Board mentioned in Exhibit B, attached to this petition, nor any of them, have any jurisdiction or authority to pass upon or to consider the matters and things set forth in the said Objections; for the reason that no one of the said persons last mentioned, nor any or either of them, can hold or find or say, under the law, that the Village of Lyons has a population in excess of 5,000, as the said Objections set forth and contend.

41 XII. *Second Ground for Mandamus.* Petitioners and relators show, as a second ground for granting this Petition for Mandamus, that—

Under and by virtue of Section 10-8 of Chapter 46 of the Revised Statutes of the State of Illinois, the Village Clerk of the Village of Lyons was required, as a necessary and jurisdictional part of the process of forwarding the said "Objections" to the said purported local Electoral Board to "transmit a copy by registered mail of the objector's petition to the candidate whose Certificate of Nomination or nomination papers are objected to, addressed to the place of residence designated in said Certificate of Nomination or nomination papers";

and petitioners and relators show that the said Village Clerk utterly ignored the said provisions of the statute and utterly failed to comply therewith, so far as any and all of these petitioners and relators, as candidates, are concerned; but on the contrary, the said Clerk merely sent by registered mail a certain letter, copy of which is attached hereto as "Exhibit F," and made a part of this petition.

And your petitioners and relators show that the neglect

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and failure of the said Clerk of the Village of Lyons to comply with the Statutes of the State of Illinois, as above indicated, vitiates and invalidates any proceedings or hearing whatsoever of the defendant, the Honorable Edmund K. Jarecki, or of the two other persons purported to be associated with him as constituting the said Electoral Board or any or either of them; and that therefore none of the persons last mentioned, or any or either of them, have any jurisdiction whatever to hear any objections to the Certificates of Nomination or nomination papers of any of the petitioners or relators herein.

XIII. Petitioners and relators show that on
42 March 21, 1945, and before the filing of this Petition for Mandamus, they duly made a written demand on the defendant, the Honorable Edmund K. Jarecki, requesting and demanding that he forthwith return to the Village Clerk of the Village of Lyons, all papers and documents received by said defendant from the said Village Clerk in connection with the said Objections, as hereinabove alleged, and that such demand and request was made for the reasons and grounds set forth in said written demand, a true copy thereof being hereto attached as "Exhibit G" and made a part of this petition.

But notwithstanding such demand and request, petitioners and relators show and charge that the said defendant, the Honorable Edmund K. Jarecki, has failed and refused to comply therewith.

XIV. Petitioners and relators, and each of them, show and charge that they, and each of them, have a lawful and valid right to have their names printed on the ballot to be used at the village election to be held in the village of Lyons on April 20, 1945, all as set forth in the Certificates of Nomination or nomination papers of these petitioners and relators as hereinbefore mentioned and described; that the attempt or effort or plan of the defendant, the Honorable Edmund K. Jarecki (together with his two associates on the said Electoral Board), to hold any hearing on or concerning the said Objections above described, constitutes a usurpation of authority by the said defendant (and his said associates), contrary to law; and that by reason of the premises set forth in this petition the said defendant ought by right forthwith to comply with the notice and demand of petitioners and relators hereinabove mentioned and described.

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43 XV. Petitioners and relators therefore charge that by reason of the premises hereinabove set forth in this petition it was and is the legal duty of the defendant, the Honorable Edmund K. Jarecki, forthwith to return the said documents and papers herefore lodged with him, as above described, to the Village Clerk of the Village of Lyons, all as demanded by him by these petitioners and relators.

XVI. Petitioners and relators show that the issuance of the Writ of Mandamus prayed for herein will not cause any confusion or disorder in the public service or in the arrangements for and conduct of the said village election in the said Village of Lyons; and further show that the issues set forth in the Petition for Mandamus may be heard and determined in ample time so as to do no injury or damage whatever to any person or to any candidate for office at the said Village election other than petitioners and relators.

Wherefore, petitioners and relators respectfully pray that a peremptory Writ of Mandamus may be issued herein, under the seal of this Honorable Court, directed to the defendant, the Honorable Edmund K. Jarecki, who is hereby made a defendant to this petition, commanding him forthwith to take such steps as will comply with the written demand of petitioners and relators hereinabove described, and particularly, to return the said Objections and all relating papers forthwith to the Clerk of the Village of Ralph E. White signed the said document Yours very the said defendant or any of his associates on the said local Electoral Board; and further commanding the defendant to take such other steps and actions in the premises as may be particularly directed to him by this Honorable
44 Court; and petitioners and relators pray for such other and further orders and relief in the premises as law and justice and equity may require.

May It Please The Court to issue a Writ of Mandamus herein, returnable on the 27th day of March, 1945, directed to the defendant, the Honorable Edmund K. Jarecki, commanding him to show cause why the peremptory Writ of Mandamus should not issue forthwith against him, as prayed for in this petition.

Lyman F. Martin — Henry J. Metz
Cecil Grgurich — John F. Gazarek
Joseph Cerny — Frank J. Kucera

By Urban A. Lavery (Signed)
Urban A. Lavery, Their Attorney.

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EXHIBIT 6-A.

In The Circuit Court of Cook County

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| People ex rel Lyman F. Martin, et al<br>*Plaintiffs*<br>vs.<br>The Honorable Edmund K. Jarecki, etc.<br>*Defendant.* | 45 C 2198 |

AMENDMENT TO PETITION FOR MANDAMUS

Come now relators and petitioners herein by Urban A. Lavery their attorney, and after leave of court being granted therefor, file herein this Amendment to the Petition for Mandamus heretofore filed on, to wit, March 22, 1945.

Relators and Petitioners amend their said petition
45 for Mandamus by adding thereto, at the foot of paragraph numbered XVI thereof (and before the prayer for relief, etc.) the following additional paragraphs as hereinafter numbered:

XVII. Relators and Petitioners show that one Ralph E. White signed the document dated March 17, 1945, addressed to "Honorable Edmund K. Jarecki, County Judge, Cook County, Illinois" (copy of which document is attached to the original Petition for Mandamus herein and made a part thereof as Exhibit E), and the said Ralph E. White signed the said document Yours very truly, Ralph E. White, Village Clerk," as shown by the said document itself; that the said Ralph E. White, purporting to act as such Village Clerk of the Village of Lyons," in and by the said document (Exhibit B), purported to certify officially his own name (by virtue of his purported claim to be Village Clerk) as one of the members of the so-called "Municipal Officers Electoral Board."

Relators and petitioners show and charge that the said Ralph E. White, at the time of his signing and issuing and mailing and forwarding the said document dated March 17, 1945, above described (Exhibit B) was not and is not now the Village Clerk of the Village of Lyons, Cook County,

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Illinois; but on the contrary, relators and petitioners show that for more than a year last past and at the time the said Ralph E. White signed the said document last mentioned, and at the time of the filing of the Petition for Mandamus herein, and at the time of the filing of this amendment thereto, the Village Clerk of the Village of Lyons, was one Joseph Janda, residing at 8312 West 44th Place, in the said Village of Lyons, and therefore relators and petitioners charge:

46 (a) That the actions and doings of the said Ralph E. White in the premises, as recited in this paragraph numbered XVII, were false and malicious and illegal, for the reason that said Ralph E. White was not, at the time of his signing of such document, and is not now the village Clerk of the Village of Lyons;

(b) that the actions and doings of the said Ralph E. White in the premises were contrary to law and were a violation of the Criminal Code of the State of Illinois and constitute a crime against the people of the State of Illinois, in violation of Chapter 38, Sec. 260, Illinois revised Statutes, which section of the Criminal Code provides as follows:

> "Sec. 260. *Falsely assuming an office.* Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy sheriff coroner, constable, police officer, watchman, *or other officer,* and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be confined in the county jail not exceeding one year or fined not exceeding $500."

and relators and petitioners show that the acts and doings of the said Ralph E. White in the premises, as above recited, constituted and constitute a violation of law and of that particular statute in two respects, namely: first, that Ralph E. White "assumed and pretended" to be an officer of the State of Illinois, to wit, Village Clerk of the said Village of Lyons when he was not such Village Clerk; second, that said Ralph E. White required another person, to wit, the Honorable Edmund K. Jarecki, defendant herein, to "aid and assist him in a matter pertaining to the duty" of the office of Village Clerk of the Village of Lyons when he, the said Ralph E. White, was not clerk of the

47 said Village of Lyons, and by reason of the matters

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and things alleged in this paragraph numbered XVII, the defendant, the Honorable Edmund K. Jarecki, could not lawfully act as Chairman of the said Municipal Electoral Board and could not accept or receive any papers or documents purporting to have been sent to and filed with him as Chairman of the said electoral board, as recited in the purports to have been done in the said documents dated March 17, 1945 (Exhibit B), purporting to have been signed by the said Ralph E. White as Village Clerk; and therefore because of the particular matters and things recited and alleged in this paragraph XVII, the said defendant was and is without authority or jurisdiction in the premises whatsoever.

XVIII. Relators and petitioners show that on, to wit, the 23rd day of March, 1945, the defendant, the Honorable Edmund K. Jarecki, notwithstanding the matters and things recited in paragraph numbered XVII above pretending and purporting to act as Chairman of the said Municipal Officers Electoral Board, called the said Board into session in the main courtroom of the County Judge of Cook County, in the county Building, in the City of Chicago, and then and there purported to organize the said Electoral Board, at about 10:30 o'clock A. M. of the said day, in accordance with the provisions of Section 10-9 of Chapter 46 of the Revised Statutes of the State of Illinois, and then and there pretended to proceed to a hearing upon the Objections purported to have been forwarded to him as such Chairman, a copy of said objections being attached to the original Petition for Mandamus herein as Exhibit A and made a part of the said original petition; that at the said pretended hearing of the said Electoral Board petitioners and relators were present with their counsel,
48 Messrs. Urban A. Lavery and Frank J. Lexa, and the said relators and petitioners thereupon and at the time last mentioned, and in the presence of the defendant as such Chairman and in the presence of the said Ralph E. White and Louis Hoffman, purporting to act as the two other members of the said Electoral Board, challenged the right of the said Ralph E. White to do any acts or things as the said Village Clerk of the said Village of Lyons, for the reason (as there and then stated by relators and petitioners, by their counsel) that the said Ralph E. White was not then and there the duly appointed or acting Village Clerk of the said Village of Lyons.

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And relators and petitioners show that notwithstanding such challenge of authority and such want of authority of the said Ralph E. White in the premises, nevertheless the said defendant, The Honorable Edmund K. Jarecki, proceeded to go forward with a pretended and purported hearing by the said Municipal Officers Electoral Board on the said Objections already mentioned and described; and therefore, because of the matters and things recited and alleged in this paragraph XVIII, the said defendant was and is without authority or jurisdiction in the premises whatsoever.

XIX. Relators and petitioners attach to this amendment (as Exhibit H and make a part of the original Petition for Mandamus filed herein) a true and correct stenographic record before the so-called Municipal Officers Electoral Board of which the defendant purported to act as Chairman, on, to wit, March 23, 1945, the said Transcript being incorporated in the Petition for Mandamus filed
49 herein and made a part hereof, for the information of this court.

Respectfully submitted,
Lyman F. Martin Henry J. Metz
Cecil Grgurich John F. Gazarek
Joseph Cerny Frank J. Kucera
By Urban A. Lavery (Signed)
Urban A. Lavery, their Attorney.

## EXHIBIT 7.

Judgment in Mandamus in case No. 45 C 2198 in the Circuit Court Entered March 26, 1945.

This matter coming on to be heard in open court before the undersigned as one of the judges of the Circuit Court of Cook County; and the plaintiffs being represented in court by Urban A. Lavery, their attorney; and the defendant being represented in court by his attorney, William J. Tuohy, State's Attorney of Cook County, by Gordon Nash, Assistant State's Attorney, and having duly entered his appearance herein by his said attorney;

And this matter being submitted to the Court on the merits by agreement of the plaintiffs by their said attorney and the defendant by his said attorney; and the defendant having duly entered his oral motion *ora tenus* to dismiss the Petition for Mandamus herein as amended;

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And the Court having considered the Petition for Mandamus herein as amended and the said Motion of the defendant above mentioned and having heard arguments of counsel for both plaintiffs and defendant in the premises, doth find the issues for the plaintiffs and against the defendant upon the defendant's said Motion; and the defendant having failed to plead further in the premises;

50 The Court now finds that the Municipal Electoral Board for the Village of Lyons, mentioned and described in the said Petition for Mandamus as amended, was illegally constituted; and was particularly illegally constituted for the reason that one Ralph E. White, purporting to act as a member of the said Electoral Board by virtue of his being Village Clerk of the Village of Lyons, was not in truth and in fact Clerk of the Village of Lyons at the time of the convening and hearing of the said Electoral Board and therefore had no power or authority to act as a member of the said Electoral Board.

Wherefore, the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons, is hereby directed and ordered to enter a finding in the proceedings of the said Board, to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law and that the said Electoral Board, therefore, should be dissolved; and the said defendant is further ordered and directed, forthwith, to return all Certificates of Nomination or nomination papers and other documents now in his possession as such purported Chairman of the said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve the said purported Electoral Board.

(Signed)

HARRY M. FISHER,

*Judge of the Circuit Court of Cook County.*

51 EXHIBIT 8.

COUNTY COURT OF COOK COUNTY ILLINOIS

Chambers of
Judge Edmund K. Jarecki
Chicago

(Seal)

March
Twenty-sixth
1 9 4 5

Hon. Ralph E. White,
Village Clerk,
Village Hall,
4130 Maple Avenue,
Lyons, Illinois.

In re. Objections of
Karl Schimmelphennig, *et al.*,
to the Nominating Petition of
"Regular Peoples Party".

Dear Sir:

Circuit Judge Harry Fisher today issued a Writ of Mandamus, directing me to return all papers in the above entitled matter to you, on the ground that the Electoral Board was illegally constituted.

In accordance with the directions of this mandate, I have enclosed the original Objections and the Petitions of the "Regular Peoples' Party" and the "Regular Progressive Citizens' Ticket" of the Village of Lyons, inasmuch as the mandamus action automatically ends the action of the Electoral Board.

Very truly yours,
EDMUND K. JARECKI,
*County Judge.*

EKJ.MC
Encl.

52 EXHIBIT 9.

State of Illinois,
County of Cook—ss.
Village of Lyons,
Before The Municipal Officers Electoral Board Of The Village Of Lyons
In Re Matter of Objections to the Certificate of Nomination of the "Regular Peoples Party" for Village Offices of President of The Board of Trustees, Village Clerk, Three Trustees and Police Magistrate for The Village of Lyons, Cook County, Illinois,

RESOLUTIONS

Whereas, the Electoral Board of the Village of Lyons, consisting of

Hon. Edmund K. Jarecki, Chairman
Mr. Ralph E. White and
Mr. Louis Hoffman, Members

convened on March 23, 1945, at 10:00 o'clock A. M. in the courtroom of said Hon. Edmund K. Jarecki to consider the objections of Karl Schimmelphennig and O. H. Felton to the Certificate of Nomination of the Regular People's Party of the Village of Lyons; and

Whereas, at the said hearing a vote was taken on the question of sustaining the objections of said Karl Schimmelphennig and O. H. Felton to the Certificates of Nomination of the Regular People's Party which said vote
53 was duly recorded and shows that the Hon. Edmund K. Jarecki, Chairman, voted against sustaining said objections and that Mr. Ralph E. White and Mr. Louis Hoffman voted for sustaining said objections; and

Whereas, Mr. Urban A. Lavery and Mr. Frank J. Lexa appearing on behalf of the Regular People's Party challenged the right of Mr. Ralph E. White to act as a member of the above named Electoral Board, alleging as the reason for their challenge that said Mr. Ralph E. White was not the Village Clerk of the Village of Lyons, having

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resigned and having been sworn in as the *Chief of Police* of said Village; and

Whereas, the Hon. Edmund K. Jarecki has returned all certificates of nomination or nomination papers and other documents to the Village of Lyons and has declared this Electoral Board dissolved; and

Whereas, the said Mr. Ralph E. White and Mr. Louis Hoffman have examined the minutes of the Board of Trustees of the Village of Lyons and have found that the said Mr. Ralph E. White has not resigned, but that he is the duly elected, qualified and acting Village Clerk of the Village of Lyons, and as such is a duly qualified member of the Electoral Board of the Village of Lyons; and

Whereas, no testimony was adduced at the hearing of this Electoral Board on March 23, 1945, touching upon the election and qualification of said Mr. Ralph E. White as Village Clerk, and the Board having here and now considered the said Certificates of Nomination and the objections made thereto and the evidence offered in support of said objections, and having heard the arguments of counsel and being fully advised;

54 Now, Therefore, Be It And It Is Hereby Resolved And Ruled, by the Electoral Board of the Village of Lyons, as follows:

1) That it has jurisdiction to hear and consider the said objections to said Certificate of Nomination.
2) That the "Regular People's Party" is an established political party within the Village of Lyons, Cook County, Illinois.
3) That the population of the Village of Lyons is in excess of six thousand (6,000) persons.
4) That the Certificate of Nomination filed by the "Regular People's Party" does not comply with Article X of the Election Code, the Illinois Revised Statutes 1943, governing the nomination of candidates for established political parties, and is therefore null and void.

Wherefore, This Board Further Resolves And Rules:

1. That the Electoral Board of the Village of Lyons which convened on March 23, 1945, as above stated was in all respects legal and was qualified to act.

2. That the vote taken at the hearing of March 23, 1945, was legal and binding.

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3. That the findings of the Electoral Board at the hearing of March 23, 1945, were legal and binding and should be entered upon the records of this Board.

4. That the Hon. Edmund K. Jarecki, as Chairman of said Electoral Board has refused to so enter said vote and findings and transmit copies thereof to the
55 candidates of the Regular Peoples Party, the Village Clerk of the Village of Lyons, and to the objectors to said certificates of nomination, as provided by law, and refuses to further participate herein.

5. That having failed to do so, Mr. Ralph E. White be and he is hereby authorized to make and enter such findings upon the records of this Electoral Board and to transmit them to candidates of the Regular Peoples Party, to the Village Clerk of the Village of Lyons and to the objectors to said certificates of nomination.

6. That this Board now adjourn *sine die.*

Adopted this 27th day of March, A. D. 1945.

.....
Chairman Member
(Signed) Ralph E. White
Village Clerk Member
(Signed) Louis E. Hoffman
Trustee Member

## EXHIBIT 10.

Petition in contempt proceedings filed on April 2, 1945, in the Circuit Court of Cook County in the case of People *ex rel.* Lyman F. Martin, *et al.*, plaintiffs *vs.* The Honorable Edmund K. Jarecki, etc., Defendants, No. 45-C-2198, as follows:

### Petition In Contempt Proceedings.

Now come your petitioners, Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gaz-
56 arek, and Frank J. Kucera, and file this their petition pursuant to leave of Court first had and obtained and respectfully represent and show unto your Honors as follows:

1. A judgment in mandamus was duly entered by this Honorable Court by the Honorable Harry M. Fisher, one

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of the Judges thereof in the above entitled cause on the 26th day of March, A. D. 1945, a copy of which judgment is hereto attached and by reference thereto incorporated herein and made a part hereof, the same as though set out in full in words and figures in the body of this petition and is marked Petitioners' Exhibit "A".

2. That a true and correct copy of said judgment in mandamus was duly served on the Honorable Edmund K. Jarecki, the defendant in the original proceeding herein on or about 3:00 o'clock P. M. on the 26th day of March, A. D. 1945.

3. On the same date last mentioned, in compliance with said judgment in mandamus, the Honorable Edmund K. Jarecki, as Chairman of the purported Lyons Municipal Officers Electoral Board forthwith returned by registered United States mail all certificates of nomination or nomination papers together with a true and correct copy of said judgment in mandamus and all other documents concerning objections to the certificate of nomination of the Regular Peoples Party of Lyons, Illinois, then in his possession as Chairman of said purported Electoral Board back to the Village authorities of the Village of Lyons.

4. On the same date last mentioned the Honorable Edmund K. Jarecki as Chairman of said purported Lyons
57 Municipal Officers Electoral Board in compliance with said judgment in mandamus entered a finding that no action whatever on the objections filed to the nominating petition of the Regular Peoples Party mentioned in the original Petition for Mandamus and Amendment thereto was taken by said purported Electoral Board and entered a finding in the records of said Board to that effect; that said Board as convened was not properly and lawfully constituted under the law.

5. That on the same date the Honorable Edmund K. Jarecki, as Chairman of said purported Electoral Board dissolved said Board, consisting of himself, and the respondents Ralph E. White and Louis Hoffman.

6. Your petitioners further represent and show unto this Honorable Court that the respondents Ralph E. White and Louis Hoffman and each of them prior to engaging in the acts hereinafter complained of had due and proper notice and in all respects were aware of said judgment in mandamus and the purport and effect thereof and had

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notice of the entry thereof in the following manner namely:

(a) By personal written notice of said judgment in mandamus and the entry thereof, by having a true and correct copy of said judgment in mandamus in their possession.

(b) Said respondents were orally informed and notified by the Honorable Edmund K. Jarecki in his chambers of the entry of said mandamus judgment and of his compliance with the terms and provisions thereof as aforesaid.

(c) By notice from the Honorable Edmund K. Jarecki orally that he has severed his connections with said Board and that said Board has been dissolved.

58 (d) By being denied permission to use the courtroom of the Honorable Edmund K. Jarecki, by Judge Jarecki personally, for the purpose of engaging in the acts hereinafter complained of.

7. That the People of the State of Illinois and the defendant, Honorable Edmund K. Jarecki, defendant, were represented by the States Attorney of Cook County, Illinois, by Gordon Nash, Assistant State's Attorney.

8. Your petitioners further represent and show this Honorable Court that with full knowledge of all facts concerning the entry of said judgment and the compliance therewith on the part of the Honorable Edmund K. Jarecki and with utter disregard of all respect for the dignity of this Court and its judgments and orders and in utter defiance and in willful contempt thereof, said respondents, Ralph E. White and Louis Hoffman committed the following acts after being denied permission by Honarable Edmund K. Jarecki to use his court room No. 603, County Building, Chicago, namely:

(1) Illegally and unlawfully met and convened in Room 233, County Building, Chicago, Illinois, on or about 11:15 o'clock A. M. on the 27th day of March, A. D., 1945, as a purported Municipal Officers Electoral Board for the Village of Lyons without the Honorable Edmund K. Jarecki, as Chairman thereof.

(2) Unlawfully and improperly received and considered improper documentary evidence pertaining to and concerning the population of the Village of Lyons.

(3) Unlawfully and illegally received purported findings of fact and other documentary evidence.

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(4) Illegally and unlawfully proceeded to consider and rule upon objections filed to the Certificate of Nomi-
58 nation for the Village offices of Village President of the Board of Trustees, Village Clerk, three Trustees and Police Magistrate for the Village of Lyons appearing on the Certificate of Nomination filed by the Regular Peoples Party of the Village of Lyons.

(5) Illegally and unlawfully entered upon the purported records of said Board certain findings of fact pertaining to the objections last mentioned.

(6) At and prior to said illegal and unlawful convening and meeting of said purported Electoral Board and in advance of said purported hearing caused to be prepared the Resolution hereinafter mentioned with all findings of fact and rulings of said purported Board contained therein pursuant to a predesigned and deliberate and unlawful conspiracy, plan and intention to strike the names of your petitioners from the ballot and to prevent your petitioners from having their names printed on the official ballots to be submitted to the voters of the Village of Lyons at the Municipal Election to be held on April 17th, 1945, at Lyons, Cook County, Illinois.

(7) Illegally and unlawfully purported to pass and adopt a Resolution, a certified copy of which bearing the genuine signatures of the respondents, Ralph E. White, as Village Clerk and member, and of Louis Hoffman, as Trustee and Member is attached to the original of this Petition and by reference thereto incorporated herein and made a part of this Petition and is marked Petitioners' Exhibit "B" and copies of which are attached to copies of this Petition.

(8) Caused to be mailed to your Petitioners and each of them by registered United States Mail a purported certified copy of said purported Resolution together with a letter addressed to each of your Petitioners, a copy of said letter addressed to the petitioner, Lyman F. Martin is hereto attached and
60 by reference thereto incorporated herein and made a part hereof and is marked Petitioners' Exhibit "C".

(9) Illegally and unlawfully directed and authorized the

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respondent, Ralph E. White, to enter the purported findings mentioned in said Resolution upon the purported records of said Electoral Board.

(10) Illegally and improperly directed the respondent Ralph E. White to mail the original Certificate of Nomination filed by the Regular Peoples Party by registered United States Mail together with all statement of candidacies attached thereto signed by your petitioners to the Regular People Party, care of Mr. Paul Stednitz, in Lyons, Illinois.

(11) That in compliance with said illegal and unlawful direction the respondent Ralph E. White did illegally, unlawfully and improperly mail by registered United States Mail the original Certificate of Nomination filed by the Regular Peoples Party of the Village of Lyons to the Regular Peoples Party in care of Mr. Paul Stednitz in Lyons, Illinois.

9. That a copy of the transcript of all of said alleged proceedings above complained of was furnished to these Petitioners by the respondents on the 28th day of March, A. D. 1945, which copy of said transcript of proceedings your Petitioners will produce in open court upon the hearing of this Petition and offer same in evidence.

10. Your petitioners further represent and show that each, all and every of the acts above set forth were done and committed by the respondents Ralph E. White and Louis Hoffman wilfully and contemptuously and in utter defiance and disregard of the orders of this Honorable Court and with contempt for the respect and dignity
61 with which said judgment in mandamus was entitled to be accorded and that the same was done contumaciously and deliberately.

11. Your Petitioners further represent and show that each, all and every of the acts, above set forth were done and committed by the respondents Ralph E. White and Louis Hoffman while said judgment remained in full force, virtue and effect and that the said judgment had not been and is not now modified, appealed, vacated or reversed but still stands in full force and effect and that said respondents, while having full knowledge and notice of said mandamus judgment did not intervene in said proceedings and made no attempt to vacate, modify, reverse or appeal the same.

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12. Your petitioners further represent and show that each, all and every of said acts above complained of are illegal, unlawful and improper, and should be forthwith annulled, vacated and rescinded by the order of this Honorable Court.

Wherefore, your Petitioners pray that leave be given your Petitioners to file this verified Petition and all exhibits attached thereto instanter; that said respondents, Ralph E. White and Louis Hoffman, be ruled to answer this Petition under oath forthwith or within a short date to be fixed by the Court; that a hearing on said Petition and sworn Answer be had by this Honorable Court; that each, all and every of the illegal and unlawful purported acts by said respondents as members of said purported Lyons Municipal Officers Electoral Board be ordered rescinded, set aside and declared null and void and said respondents, Ralph E. White and Louis Hoffman be ordered by this Honorable Court to return the original
62 Certificate of Nomination by the Regular Peoples Party of the Village of Lyons and all statements of candidacies attached thereto signed by your Petitioners to the proper Village authorities forthwith, and that the names of your Petitioners be printed upon the ballots as the candidates of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois, on the 17th day of April, A. D., 1945; or in the alternative that the respondents be ruled in willful contempt of this Court and committed to the County Jail of Cook County, Illinois, for such contempt and that such further orders in the premises may be entered as the Court may deem necessary and proper.

.....,

(signed by Six) Petitioners.

## EXHIBIT 11.

MOTION TO DISMISS THE RULE TO SHOW CAUSE IN THE CIRCUIT COURT.

* * (Caption—45-C-2198) * *

Now come the respondents, Ralph E. White and Louis Hoffman, by Joseph I. Bulger, their Attorney, and move the Court to discharge the Rule entered here on April 2, 1945, to show cause why they should not be punished as for an al-

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leged contempt of court for the following reasons and in support of said reasons allege as follows:

1) That the Municipal Officers Electoral Board of the Village of Lyons is a statutory body created for a definite purpose whose membership thereon is vested by statute.

2) That the refusal of one of its members, who happens to be designated as the Chairman by a statute, to further act, after it has been organized and is functioning as an electoral board, and has taken action, will not prevent the other members of the Electoral Board from continuing and completing the matters before it by filing its findings and rulings with the municipal authorities.

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3) Plaintiffs in the above entitled cause purposely omitted making these respondents parties defendants thereto and the Court did not acquire jurisdiction to order the said Board dissolved.

4) That the Court did not acquire jurisdiction over the other two members of the said electoral board by the simple process of the making or naming one of the members of said board party defendant in the mandamus proceeding, and the mandamus order was void for want of parties defendant.

5) That the Court did not obtain jurisdiction over the said Electoral Board as a body for the reason that the said Board is not and was not a legal entity but three individual persons whose duties and functions are set out by the statute; that the said petition for mandamus purporting to make Edmund K. Jarecki a party defendant as chairman affected only the actions of the said Edmund K. Jarecki and no other; that the order of this honorable Court was entered without acquiring jurisdiction of the parties, namely Robert E. White and Louis Hoffman, and therefore the Court had no jurisdiction to enter said order.

6) That Edmund K. Jarecki as Chairman had no power or jurisdiction under the Statute to enter any order dissolving said Electoral Board but his statutory duty was to carry out the findings and ruling of the said electoral board and that this honorable Court had no jurisdiction to invest said Chairman with such power and the acts of the said Chairman, taken in obedience to, and in carrying out, said order were and are void.

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7) That the said Petition shows upon its face that respondents are not parties to the above entitled proceeding

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and that nothing in the said mandamus order contained prevented these respondents from entering the previous ruling of the Board by certifying to the action which the three members had taken before the mandamus petition was filed.

8) That the mandamus order entered herein and directed to Edmund K. Jarecki as Chairman of the said Electoral Board did not and could not take away from the respondents their duty cast upon them by the Statute to carry out and complete the functions of the said Electoral Board.

9) That regardless of the said Mandamus order it was the duty of the respondents to certify to the action of the Board taken upon said objections and cause the same to be filed with the proper municipal officers and authorities and to send copies to the persons interested in the result of the said finding and ruling.

10) That the Relators in this suit planned purposely to omit making the respondents parties to said mandamus proceedings, so that, an oral admission by Edmund K. Jarecki of the facts alleged might vest this honorable Court with authority immediately to enter a mandamus order and thereby deprive respondents of an opportunity to be heard upon the merits of said matter, and for such reason it is
65 now inequitable that the respondents should be held in contempt of court for proceeding to perform their statutory duty, when they were purposely deprived of an opportunity to defend such action.

11) That respondent, Ralph E. White, upon the petition of relators and the admissions of the said Edmund K. Jarecki, and no more, was adjudged not to be Village Clerk of said Village of Lyons, thus collaterally adjudicating the title of this respondent, Ralph E. White, to said office, which is an action taken without due process of law and in violation of the Constitution of Illinois and of the United States.

12) That the said mandamus order was purposely not directed to these respondents and said order does not in any wise purport to control the acts of these respondents or direct them to take any action or restrain them from taking any action, and could not have been intended to control their acts.

13) That the intended purpose of the said mandamus order was to destroy the said Electoral Board which this

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honorable Court had no jurisdiction or power to do.

14) That the said Electoral Board is created by the Statute and its duties are defined by the Statute and the said Electoral Board was supreme in its own jurisdiction and sphere and that this honorable Court had no power or jurisdiction to direct it to do any certain thing within its jurisdiction or to undo what it had done in the premises.

15) That said respondents before proceeding to enter their ruling in the matter before them consulted with an attorney of standing at the bar and an officer of
66 this Court as to what action they should take in view of the cooperation of the said Edmund K. Jarecki with the attorneys for the plaintiffs in the procuring of said order, and were advised and informed in good faith that the said plaintiffs had deliberately omitted the respondents from said litigation, and that said order as entered was beyond the jurisdiction of the judiciary, and that it was the legal and bounden duty of the respondents to proceed to record the findings and rulings of the said Electoral Board which had been made before said mandamus petition was filed, and before the said order was entered, and that these respondents, believing such action to be their right and duty, proceeded under advice of said attorney, and made a record of their said findings pursuant to the statute.

16) That these respondents deny all wilful intention to act in contempt of this Court and urge that their acts are not in contempt of court and that their only desire in the premises is and was to perform their statutory duty.

17) That the said Electoral Board is a part of the executive department function and that this honorable Court had no jurisdiction over the functions of the said Electoral Board.

18) That the said Board was legally and lawfully constituted according to law as in that case made and provided and that this honorable Court had no power or jurisdiction to dissolve the same upon the petition and admission of the said Edmund K. Jarecki without getting jurisdiction of the persons of the respondents herein.

67 19) That the said mandamus order is null and void in that it directed the Chairman of the said municipal electoral board to enter a finding in the proceedings of the said board to the effect that the said electoral board as convened was not properly and lawfully constituted under

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the law and that the said electoral board therefore should be dissolved; that the said Edmund K. Jarecki, failed to carry out the directions contained in the said order, refused to participate further in said proceedings and forbade the remaining members of the electoral board to convene in his chambers, or courtroom.

20) That the said mandamus order is null and void in that the electoral board had acted, had made a finding, and could not be dissolved as it already had taken action on the matters before them.

21) That the said respondents, Ralph E. White and Louis Hoffman, are parties in interest in the proceedings herein and should have been made parties to the said proceedings, and relators, having purposely omitted to make respondents defendants in said proceeding the said mandamus order is null and void and the Court has no jurisdiction to punish these respondents for contempt for doing their statutory duty.

22) That the Court has no jurisdiction to compel these respondents as members of the electoral board to do an illegal act.

23) That the Court has no jurisdiction over the persons of these respondents nor over the subject matter and cannot compel these respondents to obey such an order by commanding one of the members of the electoral board to commit an act of dissolution.

68 24) That the plaintiffs herein have not shown a clear legal right to the writ of mandamus and any order flowing therefrom is null and void.

25) That the said mandamus order creates confusion and disorder and does not promote substantial justice.

26) That the said mandamus order is null and void in that it interferes with the executive officers of the government in the exercise of their statutory duties.

27) That the statutory duty of these respondents is discretionary and may determine any matter which is the subject of their decisions and that this honorable Court had no jurisdiction to control the exercise thereof by a mandamus order.

28) That this mandamus order is attempting to determine collaterally the rights and duties and responsibilities of the said respondents and that this Court has no power or jurisdiction to adjudicate such rights and interests collaterally.

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29) That the want of jurisdiction and power in this honorable Court appears upon the face of the petition and upon face of the mandamus order.

30) That the said petition for mandamus does not show that the said Edmund K. Jarecki had refused to perform his statutory duties and the said petition brought no subject matter to the court for adjudication.

31) The Court had no power to adjudicate upon the legality or illegality of said Electoral Board and the mandamus order is accordingly void.

Wherefore, Respondents Pray that the rule to show cause be dismissed and discharged.

Ralph E. White
Louis Hoffman

69 EXHIBIT 12.

SPECIMEN BALLOT

Village of Lyons, Cook County, Illinois

Election Tuesday, April 17, 1945

Polls Open from 6:00 A. M. to 5:00 P. M.

| REGULAR PROGRESSIVE CITIZENS TICKET | |
|---|---|
| For Village President | For Village President |
| ☐ Theofil T. Bulat | ☐ ..... |
| For Village Clerk | For Village Clerk |
| ☐ Joseph F. Janda | ☐ ..... |
| For Village Trustees (vote for three) | For Village Trustees (vote for three) |
| ☐ Matt Jadro | ☐ ..... |
| ☐ James Landa | ☐ ..... |
| ☐ Herman J. Toepper | ☐ ..... |
| For Police Magistrate | For Police Magistrate |
| ☐ James A. Cihlar | ☐ ..... |

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70 EXHIBIT 13.

Complaint for mandamus filed in the Superior Court as No. 45 S 6174 April 5, 1945, recites:

The People of the State of Illinois, ex rel. Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera,

*Plaintiffs,*

*vs.*

Ralph E. White and Joseph F. Janda, in the capacities hereinafter designated and described,

*Defendants.*

Petition for Mandamus

Come now the above named petitioners and relators, by Urban A. Lavery and Frank J. Lexa, their attorneys, and respectfully show unto the Court as follows:

I. Your petitioners and relators now are and for several years last past have been residents of the Village of Lyons in the County of Cook and State of Illinois, and citizens of the State of Illinois and of the United States, and have been during all that time, and at the time of filing this petition are duly qualified and registered electors in the said Village of Lyons and in the County of Cook and in the State of Illinois.

II. Petitioners and relators show that heretofore, and within the time provided by law, they and each of them have duly filed with the Clerk of the said Village of Lyons their Certificates of Nomination or nomination papers

71 for the offices of President of the Village Board, by Lyman F. Martin; Village Clerk, by Cecil Grgurich; Village Trustees, by Joseph Cerny, Henry J. Metz, John F. Gazarek; and Police Magistrate, by Frank J. Kucera, under the party or ticket of "Regular Peoples Party." And your petitioners and relators further show that such Certificates of Nomination or nomination papers were duly filed in accordance with the Statutes of the State of Illinois applicable thereto, namely, Sections 10-1 and 10-5 of Chapter 46 of the Revised Statutes of the State of Illinois.

III. Petitioners and relators show that they bring this Petition for Mandamus to enforce their rights to have

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the said Certificates of Nomination or nomination papers duly respected by the election authorities of the said Village of Lyons and to have their names printed on the ballots to be used in the Village election to be held in the said Village of Lyons on to-wit, the 17th day of April, 1945, under the party label or ticket of "Regular Peoples Party," as required by law.

IV. Petitioners and relators respectfully show that heretofore the defendant, Ralph E. White, pretending to act as Village Clerk of the Village of Lyons on or about the 17th day of March, 1945, wrote and signed a certain purported letter addressed to "Honorable Edmund K. Jarecki, County Judge, Cook County, Illinois," a photostatic copy of the said purported letter being attached hereto as Exhibit "A" and made a part hereof; that as stated in the said purported letter the defendant, Ralph E. White, acting as Village Clerk of the Village of Lyons, forwarded and enclosed and mailed to the said Edmund K. Jarecki, the original nominating petitions or nomination papers
72 theretofore filed by the petitioners and relators with the Village Clerk of the said Village of Lyons as hereinabove alleged; and also enclosed and forwarded certain other documents and papers as mentioned in the said purported letter.

V. Thereafter and on to-wit, March 22nd, 1945, the petitioners and relators filed their certain mandamus petition in the Circuit Court of Cook County, Illinois, General No. 45 C 2198, directed against "The Honorable Edmund K. Jarecki as hereinafter designated and described"; that in and by the said mandamus petition it was alleged and contended that the "Municipal Officers Electoral Board" mentioned and described in the purported letter of the defendant, Ralph E. White, as Village Clerk of the Village of Lyons, dated March 17th, 1945, was illegal and invalid and without any authority of law to pass upon any objections to the Certificate of Nomination or nominating papers of the petitioners and relators; that thereafter service of process in the said mandamus suit was had on the defendant, Edmund K. Jarecki, purporting to act as Chairman of the said purported Municipal Officers Electoral Board; that thereafter the State's Attorney of Cook County, the Honorable William J. Tuohy, duly entered his appearance as attorney for the said defendant; that thereafter by

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direction of the said Circuit Court and by consent of counsel for all parties to the said mandamus suit, the said mandamus suit duly came on for hearing before the said Circuit Court on to-wit, March 26th, 1945; that thereupon after such hearing, and after argument of counsel for petitioners and the defendant, the said Circuit Court of Cook County duly entered its judgment in mandamus, a true and correct copy of the said judgment in man-
73 damus being attached to this petition as Exhibit "B" and made a part hereof.

VI. That thereafter and on to-wit, March 26th, 1945, the said Edmund K. Jarecki, acting as Chairman of the said purported Electoral Board, was duly served with a certified copy of the said judgment in Mandamus; that thereafter and forthwith and upon the same day the said Edmund K. Jarecki, as Chairman of the said purported Electoral Board, duly complied with the said judgment in mandamus in all particulars and in the following respects:

(a) The said Edmund K. Jarecki then and there entered a finding in the proceedings of the said Board to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law and that the said Electoral Board should therefore be dissolved.

(b) The said Edmund K. Jarecki then and there duly ordered and directed the said purported Municipal Officers Electoral Board to be dissolved.

(c) The said Edmund K. Jarecki then and there by United States registered mail returned all Certificates of Nomination or nomination papers, including the Certificates of Nomination papers of the petitioners and relators back to the Village authorities of the Village of Lyons and that he, the said Edmund K. Jarecki, then and there wrote a letter accompanying the said papers together with a certified copy of the said judgment in mandamus, the said papers being returned to and the said letter being directed to the Village authorities all as shown by a true and correct copy of the said letter marked "Exhibit C" and made a part hereof.

74 And your petitioners and relators show and charge that the said letter from the said Edmund K. Jarecki, together with all the documents hereinabove mentioned and described in this paragraph of this petition, including specifically the Certificates of Nomination and nominating

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papers of petitioners and relators were duly received on or about the 27th day of March, 1945, by the defendants or either of them acting as Clerk of the Village of Lyons.

VII. Petitioners and relators show that by virtue of the premises hereinabove alleged and by virtue of the election statutes of the State of Illinois in that behalf provided, and particularly under Chapter 46, Section 16-5 of the Election Code of the State of Illinois, and all other laws of the State of Illinois concerned with the printing and furnishing of ballots by village authorities, your relators and each of them are entitled to have their names printed on the ballots to be used at the Village election to be held in the Village of Lyons on to-wit, April 17th, 1945; and by reason of the premises, particularly set forth in this paragraph of this petition, it became and was and is the duty of the defendants or either of them as Village Clerk of the said Village of Lyons (as this Court may determine) to cause the names of petitioners and relators so to be printed on the said ballots all as above alleged.

VIII. Your petitioners and relators duly show that the judgment in mandamus of the Circuit Court of Cook County heretofore particularly mentioned and described is still in full force and effect and has not been appealed from or in any other way changed, modified or suspended.

IX. Petitioners and relators show that the issuance
75 of the Writ of Mandamus prayed for herein will not cause any confusion or disorder in the public service or in the arrangements for and the conduct of the said Village election in the said Village of Lyons; and further show that the issues raised and set forth in this petition for mandamus may readily be heard and determined in ample time before the said Village election to permit the ballots for the said Village election to be printed in compliance with the order of this Court herein.

X. Petitioners and relators show that on April 3, 1945, before the filing of the petition for mandamus, petitioners and relators duly made a written demand on the defendants and each of them requesting and demanding that they place and print the names of petitioners and relators on the official ballot to be used in the said Village election in the Village of Lyons on to-wit, April 17, 1945; that a true and correct copy of the said written demand as so made on the said defendants is attached hereto as Exhibit "D" and duly made a part hereof.

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But notwithstanding such demand and request, petitioners and relators show and charge that the said defendants have announced and publicly proclaimed that they will not abide by the said demand and further have announced and proclaimed that they will not place or print the names of petitioners and relators on the said ballots for the said election in the said Village of Lyons on to-wit, April 17, 1945.

XI. Petitioners and relators and each of them show and charge that they and each of them have a lawful and valid right to have their names printed on the ballot to be used at the said Village election in the Village of Lyons on April 17, 1945; that the attempt or effort or plan of
76 the defendants or either of them to prevent petitioners and relators from having their names so printed on the said ballots constitutes a usurpation of authority on behalf of the said defendants contrary to law; and that petitioners and relators are without right or remedy or relief in the premises unless by the action of this Court in accordance with the prayer of this petition.

XII. *Your petitioners and relators duly show that whereas the defendant, Ralph E. White, has in some respects and for some purposes in connection with the forthcoming Village election in the said Village of Lyons purported to act as and for Village Clerk of the said Village. Nevertheless the said defendant Joseph F. Janda has heretofore and for more than one year last past been the actual and duly acting Clerk of the said Village of Lyons and has not resigned or relinquished the said office down to the time of the filing of this petition;* that by reason of the matters set forth in this paragraph of this petition there may be some confusion or contradiction as between the defendants as to which of them is the Clerk of the Village of Lyons; *and your petitioners and relators therefore ask that this Court determine that issue or question in this case and grant petitioners and relators such relief in the premises as the Court may see fit.*

And petitioners and relators show that they have made both of the parties herein named as defendants, defendants to this petition for the reasons set forth in this paragraph of this petition.

Wherefore, petitioners and relators respectively pray that a peremptory Writ of Mandamus may be issued

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herein, under the seal of this Honorable Court, di-
77 rected to the defendants Ralph E. White and Joseph F. Janda, who are hereby made defendants to this petition commanding them forthwith to abide by such orders and judgments as the Court may enter herein in the premises; and particularly to cause the names of petitioners and relators and each of them to be printed on the official ballots to be used in the said Village of Lyons at the said election on April 17, 1945, all as hereinabove alleged; and further commanding the defendants and each of them to take such other steps and actions in the premises as may be particularly directed to them or either of them by this Honorable Court; and petitioners and relators pray for such other and further orders and relief in the premises as law and justice and equity may require.

May It Please the Court to issue a Writ of Mandamus herein returnable on the 10th day of April, A. D. 1945, directed to the defendants Ralph E. White and Joseph F. Janda, commanding them and each of them to show cause why the peremptory Writ of Mandamus should not issue forthwith against them as prayed for in this petition.

Lyman F. Martin,
Cecil Grgurich,
Joseph Cerny,
Henry J. Metz,
John F. Gazarek,
Frank J. Kucera,
By Urban A. Lavery, and
Frank J. Lexa,
*Their Attorneys.*

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78 EXHIBIT 14.

State of Illinois,
County of Cook—ss.

In The
SUPERIOR COURT OF COOK COUNTY

People of the State of Illinois ex rel. Lyman F. Martin, et al., *Plaintiffs,*
*vs.*
Ralph E. White, et al., etc., *Defendants.*
No. 45 S 6174

Petition for Change of Venue.

Your petitioners, Defendants in the above entitled matter, by Joseph I. Bulger, their attorney, respectfully show that they fear they will not receive a fair and impartial trial in this cause in this court because they believe that the Honorable Joseph A. Graber, one of the Judges in this Court, and also the following Judges of said Court, are prejudiced against your petitioners-defendants: Charles A. Williams, Robert E. Crowe, William J. Lindsey and Peter H. Schwaba.

Your petitioners further represent that knowledge of such prejudice did not come to your petitioners until the 6th of April, 1945.

Your petitioners therefore pray change of venue in this cause from Joseph A. Graber, Charles A. Williams, Robert E. Crowe, William J. Lindsay and Peter H. Schwaba.

(signed) Ralph E. White
Ralph E. White (typed)
(signed) Joseph F. Janda
Joseph F. Janda (typed)

79 State of Illinois,
County of Cook—ss.

Ralph E. White and Joseph F. Janda, upon oath depose and say that they are defendants in the above entitled cause and the petitioners named in the above and foregoing petition for change of venue by them subscribed, and that the facts set forth therein are true in substance and in fact.

(signed) Ralph E. White

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(typed) Ralph E. White
(signed) Joseph F. Janda
(typed) Joseph F. Janda
J. I. Bulger,
Attorney for defendants

EXHIBIT 15.

Order requested by defendants to be entered upon their petition for change of venue in Superior Court No. 45 S 6174.

This cause coming on now to be heard upon defendants' motion for a change of venue, and the Court having read said petition and being fully advised in the premises, and it appearing from the face of said petition that the same is defective and not under oath with no jurat thereon, and for said reasons said petition is defective, and the Court having denied the defendants' leave to amend said petition on its face;

It is therefore ordered that defendants' motion for a change of venue be and the same is hereby denied.

Which proposed order was endorsed "Denied Joseph A. Graber," and filed April 12, 1945.

80 EXHIBIT 16.

Motion filed in the Superior Court No. 45 S 6174 April 11, 1945, to dismiss and strike plaintiffs' petition:

Now come the defendants, Ralph E. White and Joseph F. Janda, by Joseph I. Bulger, their Attorney, and move the Court to dismiss and strike the Petition in Mandamus and in support of said motion give the following reasons and grounds therefor:

1. That the said Petition for Mandamus shows on its face to be insufficient in law in that it fails to allege facts showing a clear legal right to said Writ of Mandamus.

2. That said Petition for Mandamus is ambiguous, uncertain and indefinite in its averments as the rights it seeks to establish are doubtful in nature and impossible of performance.

3. That the said petition shows on its face that objections were filed against the certificate of nomination of the Regular Peoples Party; that according to the allegations

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of said Petition the objections are undisposed and pending; that based upon said allegations the plaintiffs who are candidates have no legal right to have their names placed upon the election ballot, nor can they claim that right; that some affirmative averment must appear upon the petition as to the disposition of the said objections, that in all such respects the petition is insufficient in law; that it fails to state a clear legal right for the Writ; that it fails to establish a duty upon the defendants for which Mandamus lies.

4. That the judgment of mandamus order alleged
81 in the Petition shows upon its face that it is void for want of jurisdiction over the said Electoral Board; that the Circuit Court in that case had before it only one of the three (3) members thereof; that it is void for the reason that it directs one member of a subordinate tribunal vested with discretionary power to act in a particular manner when the said member has no statutory power to do the thing ordered, and can only act in conjunction with the other members of such board and as a part of a majority thereof.

5. That no duty was imposed nor did the Circuit Court vest any power upon the said Edmund K. Jarecki to dissolve said Municipal Electoral Board and the said mandamus order shows upon its face that it does not vest said Edmund K. Jarecki with such power or authority.

6. That under the allegations of said Petition the Village Clerk has no duty to put said Peoples Party ticket upon the ballot for said election, as said Petition shows upon its face by the allegations therein that said ticket is pending upon objections thereto.

7. That a Mandamus is not a writ of right and issues only when the duty of the defendants is certain and the right to have it performed is legally clear; that under the facts alleged the duty is nonexistent or at least doubtful and ambiguous.

8. That this Court has no power in Mandamus to try the title to the office of Village Clerk; that the allegations of said Petition regarding said office are confusing, uncertain and immaterial.

9. That said Petition is replete with legal conclusions unsupported by sufficient facts to establish any duty
82 upon the defendants due and owing to plaintiffs, nor

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have they or each of them violated any rights accruing to plaintiffs in the premises.

10. That said petition fails to state a cause of action in any respect; that said petition is insufficient in law; that said petition is and abounds with mere legal conclusions of the pleader.

11. That the said Municipal Electoral Board is established by law; that said Board was legally and lawfully constituted according to law; that its findings and rulings are final; and in that respect the petition herein fails to allege in what respects said board is illegally and unlawfully constituted, covering mere conclusions unsupported by facts.

12. That the said Petition is insufficient in law in that it fails to allege the rulings and findings of said Electoral Board, if any were had, in connection with the objections as shown by the Mandamus Petition herein.

13. That these plaintiffs have not used due diligence in the premises.

14. That these Plaintiffs are guilty of laches.

15. That the Plaintiffs are estopped from maintaining this action as the matters and things herein complained of are res adjudicata.

16. That the Regular Peoples Party or its duly authorized officers are necessary party to this suit.

17. That the Plaintiffs herein are not the proper parties to bring this action.

83 18. That said Petition is replete with uncertain allusions with respect to the Municipal Electoral Board; what persons composed its membership; what acts if any were performed by said Board; whether or not said Electoral Board convened; the date thereof; what, if any, ruling was entered upon their proceedings which are necessary facts being purposely avoided by the plaintiffs.

19. And for other defects appearing upon the face of the Complaint, the defendants herein move that said Petition in Mandamus be dismissed with cost assessed, most wrongfully sustained by the defendants, and against plaintiffs.

Ralph E. White
Joseph F. Janda
By Joseph I. Bulger
*Their Attorney.*

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Certificate of counsel that the said motion is not interposed for delay and is well founded in point of law.

(Above motion overruled—Defendants ordered to answer instanter.)

## EXHIBIT 17.

Answer of defendants filed in Superior Court No. 45 S 6174 April 15, 1945:

### Answer.

Now come the defendants, by Joseph I. Bulger, their Attorney, and answering the Complaint herein say:

1. That defendants have no knowledge upon which to form an opinion or make answer to the allegations contained in paragraph one (1) of said Complaint; that
84 the things alleged therein are peculiarly within the knowledge of the plaintiffs and therefore demand strict proof thereof.

2. Answering paragraph two (2) defendants deny that they and each of them duly filed with the Village Clerk of the Village of Lyons certain certificates of nomination or nomination papers, but states the fact to be that said certificate of nomination and nomination papers were filed by the Chairman and Secretary of the "Regular Peoples Party" whose names were subscribed upon said certificates of nomination or nomination papers a photostatic copy of which appear in defendants Exhibit marked "A", which Exhibit is a photostatic copy of the pleadings in case No. 45-C2198, Circuit Court Cook County, Illinois, photostatic copy of the nomination papers of the regular Peoples Party appear therein as Exhibit D-1 to D-4 both inclusive, which are made a part hereof; all of which are mentioned in Plaintiff's Complaint herein.

3. Answering paragraph 3 of said Complaint, the defendants deny that petitioners herein are entitled to have their rights enforced by a petition in mandamus and deny that they individually or collectively are entitled to have their names printed on the election ballot to be used in the Village of Lyons, on the 17th day of April, 1945 under the party label or ticket of the "Regular Peoples Party," and answering further allege that a certificate of nomination or nomination papers were filed with the defendant Ralph E. White, Village Clerk of the Village of Lyons,

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Cook County, Illinois on the 13th day of March A. D. 1945, at about the hour of 10:30 P. M. in the Village Clerk's office in the Village Hall, for which the said defendant,
85 Ralph E. White, Village Clerk, gave his receipt therefor, that, thereafter on or about March 18, 1945 said Ralph E. White, Village Clerk, received by registered mail, a paper the contents of which disclosed that two persons Carl Schimmelphennig and O. H. Felton qualified registered electors of the Village of Lyons, filed objections to the Regular Peoples Party papers, a copy of said objections appear in defendants' Exhibit A (as Exhibit A therein) which are made a part hereof by reference.

4. That upon advice of the Village Attorney the said objections and the certificates of Nomination or nomination papers of the Regular Peoples Party together with the Village Clerk's letter was sent by registered mail to Hon. Edmund K. Jarecki; the reasons for so doing are stated in Village Clerk's letter, a photostatic copy of which appears in defendant's Exhibit A (as Exhibit B therein).

And answering further the following proceedings took place with respect thereto.

(A) Call by Edmund K. Jarecki, as Chairman of the Lyons Municipal Electoral Board, sent to the defendant Ralph E. White and Louis Hoffman, oldest sitting trustee, calling a meeting of the said Electoral Board a photostatic copy of which appears in defendants Exhibit A (as Exhibit F).

(B) Letter of Ralph E. White to each of the candidates against whom the objections were filed a photostatic copy of which appear in defendant's Exhibit A (as Exhibit F), advising said parties of the objections.

(C) That thereafter and to-wit on March 23, 1945 at 10:15 a. m., the said Municipal Electoral Board met
86 and convened according to law in the courtroom of the Hon. Edmund K. Jarecki as Chairman of said Board, together with Ralph E. White, Village Clerk, and Louis Hoffman, oldest sitting trustee in point of service; that said Board deliberated and considered the said objections and that a transcript of said proceedings appear in defendants' Exhibit A (as Exhibits H-1 to H-7), inclusive; showing therein that the Board voted and recorded its findings and rulings; that said Board suspended or adjourned its meeting until the 27th day of March, 1945, upon the request of counsel of the relators.

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(D) That, thereafter on, to-wit, the 27th day of March, 1945, the said Board, on advice of counsel, continued with the proceedings of said Board; a transcript of said proceedings are attached hereto and made a part thereof and marked Exhibit "B".

5. That, to-wit, on the 22nd day of March, 1945, the plaintiffs in this case and also the plaintiffs in Circuit Court case No. 45-C-2198, filed their complaint of Mandamus; a photostatic copy of said pleadings are attached hereto and made a part hereof and marked Defendants' Exhibit "A".

6. That on, to-wit, March 26, 1945, the said Edmund K. Jarecki sent the following letter to Ralph E. White as Village Clerk a copy of said letter appears in the Complaint therein as Plaintiff's Exhibit C, which is made a part hereof by reference.

7. That on, to-wit, March 26, 1945 the Honorable Harry M. Fisher, one of the Judges of the Circuit Court upon the said pleadings (Defendant's Exhibit "A") herein and Plaintiff's Exhibit B-1 herein, issued a Mandamus Order which is made a part hereof, by reference.

87 8. That on the 27th day of March, 1945, the said Ralph E. White and Louis Hoffman, majority members of said Electoral Board, sent their rulings and findings to each of the said candidates of the "Regular Peoples Party" and to the Chairman and Secretary of said established political party, a photostatic copy of which is attached hereto, made a part hereof and marked Defendants' Exhibit "C".

9. That the Plaintiffs caused the Circuit Court in case No. 45-C-2198 to enter a rule to show cause upon said Ralph E. White and Louis Hoffman, returnable on the 4th day of April, 1945; copy of said rule and order are attached hereto and made a part hereof and marked Defendants' Exhibit "D".

10. That on, to-wit, April 4, 1945 said defendants appeared with their counsel and then and there, after leave of court first had and obtained, filed their motion to dismiss and discharge said rule for lack of jurisdiction; a copy of said motion is attached hereto, made a part hereof, and marked Defendants' Exhibit "E".

11. That, on to-wit, April 6, 1945, upon argument of counsel of all the parties, said Circuit Court sustained said

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respondents motion to dismiss and discharge and did dismiss and discharge said respondents motion; that a transcript of that hearing is attached hereto, made a part hereof, and marked Defendants' Exhibit "F".

12. Answering paragraph 5, defendants admit that these plaintiffs filed their suit No. 45-C-2198 in the Circuit Court but deny that letter dated March 17, 1945 signed by said Ralph E. White and Louis Hoffman, is illegal and invalid and with no authority in law to pass upon said objection, and deny that the process in the Circuit
88 Court mandamus proceedings No. 45-C-2198 that defendant Edmund K. Jarecki could bind said Ralph E. White and Louis Hoffman by entering his appearance and confessing the allegations of said complaint, and answering further say that those proceedings were null and void and an attempt to destroy and hold for naught the right, duty and obligations of the Municipal Electoral Board to functioning as a legal, lawful and statutory body, and an attempt to restrain the said Electoral Board to do its statutory duty as an Executive branch of the State Government over which it is of equal dignity with the Judicial and Legislative branches of our State Government.

13. Defendants admit the allegations contained in paragraph 6 of said Complaint, that said Jarecki was duly served with a copy of the writ, and answering further aver that said Mandamus order is null and void and of no effect upon the members of said Electoral Board or upon the proceedings had by said Board in the hearing and ruling and findings upon the objections filed with it; that said Mandamus order is contrary to the express provisions of the Statute creating said Electoral Board, and these respondents admit the writing of said letter and return of papers but deny all other allegations in paragraph 6.

14. Answering paragraph 7 of said Complaint, defendants deny that the relators and petitioners herein are entitled to have their names printed on the Village Election Ballot under Chapter 46, Section 16-5 of the Election Code and answering further allege that proceedings on objections to the relators and petitioners certificate of nominations were had under the provisions of Chapter 46, Secs. 10-1, 10-2, 10-8, 10-9, subparagraphs 4, 5, Sec.
89 10-10, and answering further these defendants say that said Electoral Board met, convened, considered

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the objections to plaintiffs certificates of nomination or nomination papers, ruled, sustained the said objections sent their findings and rulings to the candidates of the Regular Peoples Party according to the Statute as made and provided in Sec. 10-10, Chap. 46 of Election Code, a copy of said findings and rulings are attached hereto, made a part hereof, and marked Defendants' Exhibit "G"; and answering further defendants say that said matters and things in that behalf are *res adjudicata;* that Chap. 46, Sec. 10, sub-paragraphs 5 and 6, provides as follows:

> "The Electoral Board shall take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they are the genuine certificate of nomination or nomination papers which they purport to be, and whether or not in the case of the certificate of nomination in question it represents the decision of the caucus or convention issuing it, correctly, and in general shall decide whether or not the certificate of *nomination papers on file are valid or whether the objections thereof should be sustained and the decision of a majority of the electoral board shall be final.*
>
> Within twenty-four hours after the electoral board has made its decision, it shall transmit, by registered mail, a certified copy of its ruling together with the original certificate of nomination or nomination papers and the original objector's petition to the office or board with whom the certificate of nomination or nomination papers as objected to, were on file, and such officer or board shall abide by and comply with the ruling so made to all intents and purposes."

90 15. Answering paragraph 8 of said Complaint, defendants admit the allegations therein but on the contrary, say that said order is null and void and of no effect; that said order does not become final, for whatever its value may be, until April 26, 1945.

16. Answering paragraph 9 petitioners deny that the issuance of this Court's writ will not create confusion and disorder in the conduct of said election but on the contrary say that Plaintiffs are attempting to use this court to command the performance of an illegal and unlawful act on the part of these defendants and in effect

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to destroy and hold for naught the proceedings of the Electoral Board.

16A. Defendants further aver that Plaintiffs have not used due diligence in the premises in that they purposely omitted and refused to make Ralph E. White and Louis Hoffman parties to the Circuit Court mandamus suit 45-C-2198 where the rights of all parties including the members of the Electoral Board proceedings could have been heard and determined; that Plaintiffs do not come into this court in good faith but are persistent in their efforts to harass, vex and coerce the defendant Ralph E. White.

17. Answering paragraph 10, defendants admit receipt of said demand but say that said demand does not cure or abrogate the previous rulings and findings of the Municipal Board, copies of which were served upon Plaintiffs according to law and answering further that these defendants have no power and authority to disregard the rulings and findings of the Electoral Board and to hold capriciously and arbitrarily that the acts and doings of said Electoral Board are for naught as said Electoral Board proceedings were had according to law; that
91 said plaintiffs and each of them with their eminent attorneys appeared before said Electoral Board in a body, together with the officers of the Regular Peoples Party, were heard in argument, participated in the deliberations of said Board, upon said objections and now ask this Honorable court to overrule the majority decision of said Electoral Board and hold the same for naught.

18. Answering paragraph 11 of said Complaint, defendants deny that the relators have any valid or legal right to have their names printed upon the Electoral Ballot for the village election to be held on Tuesday, April 17, 1945; further deny any attempt or effort or plan of the defendants, or either of them, to prevent the petitioners and relators from having their names printed upon the electoral ballot and deny that any act or acts in the premises constitutes a usurpation of authority contrary to law, but on the contrary and answering further aver that petitioners and relators have had their remedy passed upon according to law before the Electoral Board whose findings and rulings, by a majority thereof, are final.

19. Answering paragraph 12 of said Complaint, Defendants say that this court in a mandamus proceeding

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has no power to pass upon the title of a Village Officer and answering further say that defendant Ralph E. White is the duly elected and acting Clerk of the Village of Lyons, Cook County, Illinois, that since his qualification he has been functioning as such, that he is the keeper of the records and seal of said office, that he has not resigned, abandoned nor relinquished said office, and answering further defendants say the defendant Joseph F. Janda never was the elected Village Clerk nor appointed to such
92 office but is only a part time office Clerk in the office of the Village Clerk.

19A. That on March 28, 1945, the said Ralph E. White and Louis Hoffman sent a letter by registered mail notifying the Regular Peoples Party and its officers of the ruling of the said Electoral Board, a copy of which letter is attached hereto and made a part hereof and marked Defendants' Exhibit "H".

19B. That on March 28, 1945, the said Ralph E. White and Louis Hoffman sent a letter by registered mail notifying each of the candidates of the Regular People's Party of the rulings of the said Electoral Board which letter is attached hereto, made a part hereof and marked Defendants' Exhibit "I".

20. That the said petition for the Mandamus shows on its face to be insufficient in law in that it fails to allege facts showing a clear legal right to said writ of Mandamus.

21. That said Petition for Mandamus is ambiguous, uncertain and indefinite in its averments as the rights it seeks to establish are doubtful in nature and impossible of performance.

22. That the said petition shows on its face that objections were filed against the certificate of nomination of the Regular People's Party; that according to the allegations of said Petition the objections are undisposed and pending; that based upon said allegations the plaintiffs who are candidates have no legal right to have their names placed upon the election ballot, nor can they claim that right; that some affirmative averment must appear upon the petition as to the disposition of the said objection,
93 that in all such respects the petition is insufficient in law; that it fails to state a clear legal right for the Writ; that it fails to establish a duty upon the defendants for which Mandamus lies.

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23. That the judgment of mandamus order alleged in the petition shows upon its face that it is void for want of jurisdiction over the said Electoral Board; that the Circuit Court in that case had before it only one of the three (3) members thereof; that it is void for the reason that it directs one member of a subordinate tribunal vested with discretionary power to act in a particular manner when the said member has no statutory power to do the thing ordered, and can only act in conjunction with the other members of such board and as a part of a majority thereof.

24. That no duty was imposed nor did the Circuit Court vest any power upon the said Edmund K. Jarecki to dissolve said Municipal Electoral Board and the said mandamus order shows upon its face that it does not vest said Edmund K. Jarecki with such power or authority.

25. That under the allegations of said petition the Village Clerk has no duty to put said Peoples Party ticket upon the ballot for said election, as said petition shows upon its face by the allegations therein that said ticket is pending upon objections thereto.

26. That a Mandamus is not a writ of right and issues only when the duty of the defendants is certain and the right to have it performed is legally clear; that under the facts alleged the duty is nonexistent or at least doubtful and ambiguous.

94 27. That this Court has no power in Mandamus to try the title to the office of Village Clerk; that the allegations of said petition regarding said office are confusing, uncertain and immaterial.

28. That said petition is replete with legal conclusions unsupported by sufficient facts to establish any duty upon the defendants due and owing to plaintiffs, nor have they or each of them violated any rights accruing to plaintiffs in the premises.

29. That said petition fails to state a cause of action in any respect; that said petition is insufficient in law; that said petition is and abounds with mere legal conclusions of the pleader.

30. That the said Municipal Electoral Board is established by law; that said Board was legally and lawfully constituted according to law; that its findings and rulings are final; and in that respect the petition herein fails to

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allege in what respect said board is illegally and unlawfully constituted, covering mere conclusions unsupported by facts.

31. That the said petition is insufficient in law in that it fails to allege the rulings and findings of said Electoral Board, if any were had, in connection with the objections as shown by the Mandamus Petition herein.

32. That these plaintiffs have not used due diligence in the premises.

33. That these Plaintiffs are guilty of laches.

34. That the Plaintiffs are estopped from maintaining this action as the matters and things herein complained of are *res adjudicata.*

95 35. That the Regular Peoples Party or its duly authorized officers are necessary party to this suit.

36. That the Plaintiffs herein are not the proper parties to bring this action.

37. That said Petition is replete with uncertain allusions with respect to the Municipal Electoral Board; what persons composed its membership; what acts if any were performed by said Board; whether or not said Electoral Board convened; the date thereof; what, if any, ruling was entered upon their proceedings which are necessary facts being purposely avoided by the plaintiffs.

Wherefore these defendants pray and move this Honorable Court to dismiss the petition in Mandamus herein, and to assess the cost most wrongfully sustained by them against the defendants.

Ralph E. White and
Joseph F. Janda,
By Joseph I. Bulger,
*Their Attorney.*

## EXHIBIT 18.

Judgment in mandamus entered April 13, 1945 in Case No. 45-S-6174 *nunc pro tunc* as of April 12, 1945:

This cause coming on for hearing on the verified Petition for Mandamus of the above named petitioners and relators, filed herein on April 5, 1945, and also on the written Motion of the above named defendants to strike and dismiss the said petition, filed herein on April 12, 1945, and on the written Answer of the above-named defendants,

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filed herein on April 12, 1945;

96 And the Court having heard the evidence presented on behalf of the Petitioners, and having duly heard the arguments of counsel for the petitioners, and likewise the arguments of counsel for the defendants; and the Court being fully advised in the premises, the Court now finds:

1. This Court has jurisdiction of the parties hereto and of the subject matter of the cause.

2. The Court finds the issues for the petitioners and against the defendants.

3. The Court particularly finds that the petitioners above named and each of them are entitled to a peremptory Writ of Mandamus, as prayed in the Petition, against the defendants and each of them.

*Wherefore, it is ordered and adjudged by the Court that a peremptory Writ in Mandamus issue forthwith out of the office of the Clerk of this Court, directing and commanding the defendants Ralph E. White, as Clerk of the Village of Lyons, County of Cook and State of Illinois,* and as the pretending and acting *pro-tem* Clerk of the said Village, *and against the defendant Joseph F. Janda* (insofar as he also is or may be the acting or *pro-tem* Clerk of the said Village of Lyons), *and each of them, forthwith to do and perform the following:*

A. The said defendants are hereby ordered, directed and commanded to print and cause to be printed the names of the petitioners, and each of them, on the ballots (both official ballots and sample ballots) to be printed and furnished by the Clerk of the Village of Lyons on, to-wit, April 17, 1945, as candidates of, and under the Party caption or label of Regular People's Party.

B. More particularly, the said defendants are ordered, directed and commanded to print or cause to be printed

97 the said ballots last above mentioned and described, and in the manner provided by law, in such fashion as to show on the said ballots (among other things) the following under one party column or label:

| Party Label | Regular People's Party |
|---|---|
| For Village President | Lyman F. Martin |
| For Village Clerk | Cecil Grgurich |
| For Village Trustee | Joseph Cerny |
| For Village Trustee | Henry J. Metz |
| For Village Trustee | John F. Gazarek |
| For Police Magistrate | Frank J. Kucera |

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C. And that all of such printing on the said ballots above mentioned and described shall be done and performed by the said defendants in accordance with the Certificate of Nomination heretofore duly filed by the said Regular People's Party of the Village of Lyons, with the Village Clerk of the said Village of Lyons, as shown by the said Certificate of Nomination duly presented to this Court on the hearing of this cause.

And it appearing to this Court on the hearing of this cause that the said defendants or either of them, acting as said Village Clerk of the Village of Lyons, have heretofore printed or caused to be printed certain pretended or proposed ballots (both official ballots and sample ballots) for the said Village election, on, to-wit, April 17, 1945, upon which ballots the names of the said petitioners and each and all of them are entirely missing:

Now, therefore, the said defendants, and each of them (so far as either of them may act or purport to act as said Village Clerk) are ordered, directed and commanded as follows:

98 A. The said defendants are ordered and directed and commanded forthwith to cancel and destroy all such ballots as may have heretofore been printed (as above set forth) for the said Village election on April 17, 1945.

B. The said defendants are specifically and particularly ordered, directed and commanded not to permit any of the ballots last above described to be used by any precinct voting official or by any voter in the said Village of Lyons at the said election.

C. But on the contrary, the said defendants are ordered, directed and commanded to print and provide to all precinct voting officials, and for the use of all voters, at the said Village election on April 17, 1945, ballots (both official ballots and sample ballots) with the names of the petitioners thereon as hereinbefore ordered and directed in this Judgment in Mandamus.

And the defendants and each of them are further directed, ordered and commanded in all respects to recognize and acknowledge and use and respect the Certificates of Nomination of the Petitioners and each of them as if no so-called "Objections" had ever been presented against the said Certificates of Nomination of the petitioners or any of them.

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All of which the defendants shall do and perform in accordance with law; and for the failure to do any of the things or acts hereinabove ordered, the said defendants and each of them shall suffer such penalties as the law may provide.

And it is further ordered that the Clerk of this Court shall forthwith, and by special messenger, return to the Village Clerk of the Village of Lyons, and leave with the said Clerk the original Certificates of Nomination of
99 the petitioners, herein, heretofore impounded by order of this Court on, to-wit, the 10th day of April, 1945.

Entered April 13, 1945, *nunc pro tunc* as of April 12, 1945.

JOSEPH A. GRABER (Signed)
*Judge, Superior Court of Cook County.*

## EXHIBIT 19.

### PETITION FOR RULE TO SHOW CAUSE ENTERED IN SUPERIOR COURT CASE NO. 45-S-6174.

Now comes your petitioners, Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera, and respectfully represent and aver unto this Honorable Court that they are the petitioners in the above entitled cause and that a Mandamus Judgment was duly entered in this proceeding on the 13th day of April, A. D. 1945, *nunc pro tunc* as of April 12, 1945, all of which will more fully appear from the original of said judgment order in the files and records of this proceeding, the original of which your petitioners will produce upon the hearing of this Petition.

Your petitioners further represent and aver that it was and is provided in said judgment order among other things as follows:

(a) That the defendants Ralph E. White and Joseph F. Janda forthwith cause the names of your petitioners to be printed upon the official ballot to be used in the Village election to be held on April 17th, 1945, in the Village of Lyons for the election of one president, one village clerk, three trustees and one police magistrate of said Village.

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100 (b) That the defendants destroy the ballots which they had caused to be printed prior to said proceedings showing only the candidates of the Regular Progressive Citizens Party and not the names of your petitioners as candidates of the Regular Peoples Party and that the same be not used in the Village election above mentioned.

(c) That said defendants print new official ballots to be used in the election above mentioned showing the names of your petitioners as candidates of the Regular Peoples Party as follows:

For Village President ..... Lyman F. Martin
For Village Clerk ..... Cecil Grgurich
For Village Trustees ..... Joseph Cerny
Henry J. Metz
John F. Gazarek
For Police Magistrate ..... Frank J. Kucera

and deliver the same to the judges of the election for use by the voters of the Village of Lyons at said election on the 17th day of April, A. D. 1945.

Your petitioners further represent and aver that said defendants and each of them have failed and neglected and refuse to comply with said mandamus order in that they did not:

(1) Cause the names of your petitioners to be printed upon the official ballot used in the Village election held on April 17, 1945 in the Village of Lyons for the election of one president, one village clerk, three trustees and one police magistrate of said Village.

(2) Destroy the ballots which they had caused to be printed prior to said proceeding showing only the
101 candidates of the Regular Progressive Citizens Party and not the names of your petitioners as candidates of the Regular Peoples Party so that the same would not be used in the Village election above mentioned.

(3) Print new official ballots to be used in the election above mentioned showing the names of your petitioners as candidates of the Regular Peoples Party as follows:

For Village President ..... Lyman F. Martin
For Village Clerk ..... Cecil Grgurich
For Village Trustees ..... Joseph Cerny
Henry J. Metz
John F. Gazarek
For Police Magistrate ..... Frank J. Kucera

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and deliver the same to the judges of election for use by the voters of the Village of Lyons at said election on the 17th day of April, A. D. 1945.

That the defendants delivered to the judges of election as an official ballot for use in the Village election for village president, village clerk, three trustees and one police magistrate of the Village of Lyons for use in the election in said Village held on April 17, 1945, a ballot showing the names of the Regular Progressive Citizens ticket only, and omitting entirely the names of each, all and every of your petitioners therefrom in like form and tenor as the specimen ballot hereto attached in so far as the same pertains to the list of candidates printed on the face thereof, and that a copy of which specimen ballot, which was delivered by a police officer to the headquarters of the Regular Peoples Party is hereto attached and by reference thereto incorporated herein and made a part hereof.

102 That the defendants caused to be printed an official ballot for use in the Village election, which was held in the Village of Lyons on April 17, 1945 for the election of one president, one village clerk, three trustees and one police magistrate of said Village, containing the candidates of one party only, namely those of the Regular Progressive Citizens Party and no other names or candidates of any other party whatsoever, and particularly not the names of your petitioners as candidates of the Regular Peoples Party of Lyons, Illinois.

Your petitioners further represent and aver that said defendants and each of them caused the said election above mentioned to provide and be held with an official ballot containing only the names of one party, and particularly omitting the names of your petitioners as candidates for the Regular Peoples Party, and that the acts above mentioned and each of them were done in willful defiance of the order of this Honorable Court.

Wherefore, your petitioners pray that a rule to show cause be entered against the defendants and each of them to show cause why they should not be punished as in willful contempt of court.

Lyman F. Martin, Cecil Grgurich,
Joseph Cerny, Henry J. Metz, John
F. Gazarek, and Frank J. Kucera,
By Lyman F. Martin,
*Their Duly Authorized Agent.*

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## EXHIBIT 20.

Answer of Ralph E. White to Petition for Rule to Show Cause Filed May 31, 1945, in Superior Court No. 45-S-6174.

103 1) That this Respondent, insofar as the said Rule affects him and answering the leading or first paragraph of said Rule denies that he refused or disobeyed, or was or has been in defiance of any Judgment in Mandamus, or Judgment Order, entered by this Honorable Court on April 13th, *nunc pro tunc* as of April 12, 1945, or any Writ of Mandamus issued pursuant to said order or judgment, as alleged in said rule, but states the fact to be that no Mandamus judgment, or judgment order or writ of mandamus issued pursuant to said order, was ever served upon this respondent personally or otherwise, in any shape, form or manner, upon which this respondent could have acted, and answering further avers that he was not in court on the aforementioned dates.

2) This respondent, answering paragraph (a) of said Rule denies that this respondent refused to forthwith print the names of the petitioners herein upon the official ballot to be used in the Village Election to be held on April 17, 1945, in the Village of Lyons for the election of one President, one Village Clerk, three Trustees and one Police Magistrate, and states the fact to be that this respondent was never served with the Court's judgment order, or mandamus judgment, or writ of mandamus pursuant to said order or judgment, personally or otherwise, at any time before April 17, 1945, in any shape, form or manner, and answering further avers that this respondent had no notice thereof.

3) This respondent, answering paragraph (b) of said rule, denies that he refused to destroy ballots which had already been printed prior to the filing of this proceedings, showing only the candidates of the Regular Progressive Citizens Party and not the names of the Petitioners herein as candidates of the Regular Peoples

104 Party, and that the same be not used in the Village election but states the fact to be that in this connection this respondent was never served with, personally or otherwise, either a copy or original, either certified or otherwise, the order of this Court entered on April 13, 1945,

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in any shape, form or manner, nor any writ of mandamus pursuant to said order.

4) This respondent, answering paragraph (4) of said Rule denies that he refused to print new official ballots to be used in the election above mentioned, showing the names of the Petitioners herein as candidates of the "Regular Peoples Party", and to deliver the same to judges of election for use by the voters of the Village of Lyons at the said election on the 17th day of April, A. D. 1945, for the reason that this respondent was never served personally with any certified copy or otherwise of this Honorable Court's order of April 13, 1945, had no notice thereof, and was not in court the day of its entry.

5) This respondent denies that he failed, neglected and refused to comply with said Mandamus Order, and answering further denies the averments contained in each of paragraphs (1), (2) and (3) but states the fact to be that this respondent was never served personally or otherwise with a certified copy or original of said judgment order, mandamus judgment, or writ of mandamus, pursuant to said order in any shape, form or manner.

Answering paragraph 3, page 3, of said Rule this respondent, insofar as the allegations contained therein which purport to affect him, admits the specimen ballot attached to said rule is a copy authorized printed by this respondent but denies that the names of the petitioners were
105 omitted purposely and in defiance of any order of his Honorable Court but states the fact to be that the same was printed in accordance with the law as in that case made and provided and for reasons which appear in respondent's answers in paragraphs 1, 2, 3, 4 and 5 hereof and for reasons which appear more fully hereinafter; and

This respondent admits, insofar as the allegations concern him, that he caused to be printed an official ballot for use in the Village election, which was held in the Village of Lyons on April 17, 1945, as alleged in paragraph 2, page 3, of said Rule but denies that the same was in disobedience or defiance of any order of this Court for the reasons that no judgment order, mandamus order, or writ of mandamus pursuant to any order of court was served upon this respondent personally or otherwise on or before April 17, 1945.

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And answering the third paragraph on page 3 of said rule, this respondent admits that the official ballots were printed containing only the name of one party and omitting the names of the petitioners or candidates of the "Regular Peoples Party" but deny that it was done in willful defiance of the order of this Honorable Court and in support thereof state the fact to be that this respondent was not served personally or otherwise with any certified or other copy of any order of this Court in any shape, form or manner, or a writ of mandamus pursuant thereto.

5-A) This respondent further avers that said rule to show cause should be dismissed and discharged for the reason that no mandamus order or mandamus judgment or writ issued in pursuance to said order was ever 106 served upon this respondent in conformity with Rule 18 of this Honorable Court.

6) That until April 30, 1945, he was the duly elected, qualified and acting Village Clerk of the Village of Lyons, Cook County, Illinois; that this allegation of fact is also stated in the answers to the mandamus petition herein; that he was elected to said office in April of 1941 and qualified and assumed the duties of said office on May 1, 1941; that he has functioned as such officer since his said election, not having at any time abandoned, resigned or relinquished the duties thereof until April 30, 1945, nor has the President and Board of Trustees declared said office vacant, as can be more fully shown by the minutes of said Board of Trustees upon inspection; that this respondent is the keeper of the records and seal of said Village.

7) That this respondent is a resident, taxpayer and a legally registered voter of said Village, County and State and for the past fifteen (15) years has resided in said Village with his wife and family.

8) That he is a regular and full time employee of the Ceco Steel Corporation in the Town of Cicero, Cook County, Illinois, which corporation is at present and for the past three years has been engaged in the manufacture of war goods and materials.

9) That as such Village Clerk he hired with the consent and approval of the President and Board of Trustees Joseph F. Janda, as a part time record clerk as is provided in Chap 24, Sec. 9-72, Smith-Hurd Illinois Ann.

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Stat., and for no other purposes than to maintain and keep
the books and records of the said office between meet-
107 ings of the President and Board of Trustees; and
that this was also alleged in the answer filed to the Petition in Mandamus herein.

10) That as Village Clerk he also acts as Secretary of the Local Board of Improvements and of the Zoning Board of Appeals, and has since his election and up to and including the 17th day of April, 1945, signed all ordinances, resolutions and minutes, and certified to all such documents and papers.

11) That as Village Clerk, Respondent herein alleges that the Village of Lyons, Cook County, Illinois, is not under the jurisdiction of the Board of Election Commissioners of the City of Chicago, not having adopted at any time heretofore any ordinance or resolution for the purpose of giving said Election Commissioners jurisdiction but is governed by Chap. 46, paragraph 10, of the Election Code of the State of Illinois, Smith-Hurd Illinois Ann. Stat.

12) That five (5) days before the regular Village Election of April 17, 1945, this respondent as Village Clerk posted a list of registered voters of such Village under the provisions of Chap. 46, Sec. 5-32, Election Code, Smith-Hurd Illinois Ann. Stat.

13) That pursuant to and in accordance with the law as made and provided, said respondent gave notice of the Village Election to be held on April 17, 1945, by publication and posting notices in accordance with the statute as made and provided.

14) That on March 13, 1945, at 10:30 P. M., in the
office of this respondent as Village Clerk the "Regular
108 Peoples Party" filed Certificates of Nomination with
all nomination papers, addressed to Ralph E. White, as Village Clerk of the Village of Lyons, and for which this respondent gave his receipt in his own proper person and under his own proper signature; a photostatic copy of said certificates of nomination and nomination papers are part of the pleadings in the above entitled cause, which pleadings are made a part hereof by reference.

15) That on March 13, 1945, at 6:00 P. M. in the office of this respondent as Village Clerk the Regular Progres-

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sive Citizens Ticket filed Certificates of Nominations and nomination papers, addressed to Ralph E. White as Village Clerk and for which respondent gave his receipt therefor in his own proper person and under his own proper signature; a copy of said certificates of nomination and nomination papers are a part of the pleadings in the above entitled cause, which are made a part hereof by reference.

16) That on the 17th day of March, 1945, by registered mail, return receipt requested, written objections in the form of a petition, with a copy thereof, were filed to the certificate of nominations and nomination papers of the "Regular Peoples Party"; a copy of said written objections are a part of the pleadings in the above entitled cause, which are made a part hereof by reference; that said registered mail was addressed to this respondent as Village Clerk of Lyons, Village Hall, Lyons, Illinois.

17) That this respondent pursuant to his duty in that respect and within twenty-four (24) hours after the receipt of the aforementioned written objections transmitted, by registered mail, the Certificate of Nomination or 109 nomination papers and the original objectors petition to the Chairman, Edmund K. Jarecki, of the Lyons Municipal Electoral Board, designated in Section 10-9 of Chap. 46, Election Code, Smith-Hurd Ann. Stat., and transmitted copies of the objectors petition to each and every candidate appearing upon the said certificate of nomination or nomination papers; a copy of this respondent's letter to the Chairman of said Electoral Board is a part of the pleadings in the above entitled cause which are made a part hereof by reference.

18) That pursuant to receipt of said certificate of nomination or nomination papers and the written objectors petition, the Hon. Edmund K. Jarecki, County Judge, and designated by Statute to act as Chairman in lieu of the Village President, who was a candidate for re-election at the election to be held on April 17, 1945, and therefore ineligible to act on said Electoral Board, issued on March 20, 1945, due notice or call to Louis Hoffman, oldest sitting Trustee in point of service, and designated to sit upon said Electoral Board, said Hoffman not being a candidate at said election, and said Chairman also issued on March 20, 1945, due notice and call to this respondent as the Vil-

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lage Clerk, this respondent not being a candidate at said election, and also issued on March 20, 1945, a notice or call and summons to the candidates listed upon the said certificates of nomination or nomination papers and to the objectors to appear for hearing to pass upon the objectors petition and the objections to the said Certificate of Nomination of the "Regular Peoples Party".

19) That said Electoral Board met and convened in the courtroom of the Hon. Edmund K. Jarecki, Chairman of said Municipal Electoral Board, on the 23rd day of
110 March, A. D. 1945, at which time and place the said Edmund K. Jarecki, Chairman, Ralph E. White, respondent herein, and Louis Hoffman, oldest sitting Trustee of said Village Board, in time of service duly convened, and considered the said objections to the certificates of nomination or nomination papers and did then and there at the time and place above mentioned sustain the said objections by a majority vote of said Electoral Board; that a true and correct photostatic copy of a transcript of the things and matters done on that occasion are a part of the pleadings in the above entitled cause and which are made a part hereof by reference; all done and performed in accordance with Chap. 46, Sec. 10-8, 10-9, 10-10, of the Election Code, Smith-Hurd Illinois Ann. Stat.

20) That at said hearing the candidates and relators herein, Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera, and their attorneys, Urban Lavery and Frank J. Lexa, appeared personally and participated in said proceedings and made their defense to said objections; and that the objectors, Karl Schimmelphennig and O. H. Felton, also appeared to urge their contentions.

21) That the entry of said ruling and finding were by request of the attorneys representing the candidates of the "Regular Peoples Party" adjourned to March 27, 1945, 10:30 A. M. and to reconvene at the same place; that on the last above said date the said Electoral Board recorded their ruling and decision all of which appear in the transcript of the stenographers minutes; a true and correct copy thereof are a part of the pleadings in the above entitled cause and which are made a part hereof by reference, and attached hereto is a true and cor-
111 rect copy of the ruling and decision of said Electoral Board as sent to each candidate and to the Village

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Clerk marked Exhibits "X" 1 to "X" 5.

22) That an action in Mandamus was begun in the Circuit Court of Cook County entitled No. 45-C-2198, wherein Hon. Edmund K. Jarecki, as Chairman of said Electoral Board, was made defendant, the other two members being purposely omitted, wherein said proceedings said Edmund K. Jarecki was represented by the State's Attorney of Cook County, who made no defense to said action, but confessed the allegations of said Mandamus Petition; whereupon the Court (Hon. Harry Fisher), entered an order in said proceedings in words and figures is a part of the pleadings in this cause and which are made a part hereof by reference thereto.

23) That pursuant to said order the said Edmund K. Jarecki refused to participate or function as a member of said Electoral Board and declaring said board illegally constituted.

23-A) That Circuit Court had no power to enter such an order, as it was interfering with an Electoral Board created by Statute and part of the executive branch of the State government; and that said order is null and void.

24) That thereupon the said remaining members of said Municipal Elector Board finished the business before them and entered their rulings and findings of said Electoral Board and sent certified copies thereof to each and every candidate of the "Regular Peoples Party", and to each of the objectors and to the Village Clerk; a true and correct copy of said ruling is a part of 112 and included in the pleadings in the above entitled cause, which findings are made a part hereof by reference, all done and performed pursuant to and in accordance with the provisions of Chap. 46, Sec. 10-10 (Election Code), Smith-Hurd Illinois Ann. Stat.

24-A) That pursuant to Judge Fisher's Mandamus Order, the relators had the said Court in that cause—No. 45-C-2198—issue its rule to show cause why Ralph E. White and Louis Hoffman, members of the Lyons Municipal Elector Board, should not be held in willful contempt.

25) That upon hearing held on the 6th day of April, 1945, Judge Fisher, of the Circuit Court, dismissed the rule and discharged the respondents upon the sound

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ground that he lacked jurisdiction of the parties and of the subject-matter.

26) That thereupon, upon the disposal of said objections to said ticket, it became and was the duty of this respondent to proceed with the printing of the ballots and printing, posting and distributing the specimen ballots for said election and this respondent, as Village Clerk, as the officer whose duty it is under the law pertaining to municipal elections, proceeded to carry out said duties.

27) That on the 7th day of April, 1945, specimen ballots were printed; that notices to Judges and Clerks of Elections were posted in the several precincts in the said Village; and that official ballots were ordered printed on the 7th day of April, 1945, and delivered to him on the 9th day of April, 1945, all in accordance with the Statutes as made and provided:

113 28) That on the 5th day of April, 1945, a summons was served upon this respondent in the above entitled cause; that counsel was engaged and motions to dismiss and strike said Petition for Mandamus were filed in respondents' behalf; that said motion was overruled and answer was then made to the petition, all of which more fully appear in the files and records in this cause.

28-A) Respondent further alleges that this Honorable Court has power to disregard the proceedings of the said Electoral Board and hold the same for naught, or to disregard the provision of Chap. 46, Sec. 10, Smith-Hurd Illinois Ann. Stat., pertaining to said Elector Board.

29) That notwithstanding that this respondent has performed his official and statutory duties as Village Clerk, all in accordance with the law as in each instance it is provided by the Statutes, Chap. 46 (Pars. 9 and 10, Smith-Hurd Ill. Ann. Stat.) of the State of Illinois; but that this Honorable Court has assumed jurisdiction of the subject-matter where it has none, and by its order of April 13, 1945, which was never served upon this respondent, commanded this respondent and Joseph F. Janda, also a respondent herein, to disregard the statutes.

29-A) This respondent denies any willful intention to disobey any order of this Court.

29-B) This respondent denies any willful defiance to the Court's order.

29-C) That notwithstanding that no mandamus order

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or judgment order, or writ issued in pursuance of said
114 order, was ever served upon this respondent personally, that the situation presently is such that the ruling and decision of the Elector Board has been and is still in force, the same not having been changed, altered, modified nor rescinded, in any action at law or otherwise, and an order of this Court which as stated above was never served upon this respondent, but to disregard the one (which is statutory and binding) and to carry out the other (which was not served), is to commit an unlawful act with only an implied judicial sanction.

31) Respondent further answering alleges that the relators in this cause have invoked the rulings and decision of the Lyons Municipal Electoral Board; that on March 22, 1945, these same relators filed their petition in mandamus in the Circuit Court, where they had plenty of time to urge that court what is being urged in this court; and now urge upon this court the performance of a series of acts which as to the time element was a physical impossibility; the date when said order was entered was Friday, April 13, 1945, on April 12, 1945, it was necessary to have the specimen ballots not only printed but posted together with the instruction at each precinct; Saturday, April 14th, was a half-holiday, Sunday, April 15, 1945, was a holiday and Monday, April 16, 1945, the official ballots had to be delivered to the judges of election for the election the next day, Tuesday, April 17, 1945, and this respondent further says that even if said order was served on Friday evening, March 13, 1945, it would have been a physical impossibility to print again 4,000 official ballots and 2,000 specimen ballots of election, and to perform the acts ordered without creating confusion and disorder, and its effect would be to halt the holding of an election.

115 32) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon the respondent personally or otherwise, this respondent further alleges that this court's order of April 13, 1945, is null and void as it is a judicial interference with the executive branch of the State government in that it is a judicial review of the rulings and findings of a statutory board, equal in dignity with the judicial and legislative branches and whose acts of discretion are not reviewable in an action of mandamus.

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33) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon this respondent, said order is null and void as this Court lacks jurisdiction of the subject matter herein.

34) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, this respondent says that said mandamus order or mandamus judgment is null and void and of no effect as Chap. 46, Sec. 10-10 of the Election code provides as follows:

The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nomination papers on file are valid or whether the objections thereto should be sustained
116 and the decision of a majority of the electoral board shall be final.

35) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, this respondent alleges that he is duty bound under the law to: "shall abide by and comply with the ruling so made to all intents and purposes", and this Honorable court cannot undo or set aside or interfere with said Electoral Board rulings, and decision herein the premises.

36) Notwithstanding that no mandamus order or judgment or mandamus writ issued in pursuance to said order, this respondent alleges that said order is null and void, not erroneous, in that it attempts to hold for naught the rulings of the Lyons Municipal Electoral Board which power is not vested in this honorable court in mandamus proceedings.

37) Notwithstanding that no mandamus order, or mandamus judgment, or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, said order is null and void as said order flows from a petition which upon its face shows the duty to be enforced is dubious, uncertain and ambiguous.

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38) Notwithstanding that no mandamus order or mandamus judgment, or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, said order is null and void in that it compels the performance of an illegal act on the part of this respondent; that said order is null and void in that it directs the performance of a series of acts contrary to and incon-
117 sistent with the rulings of the said Electoral Board upon whom the statute has placed the final decision. (Chap. 46, Sec. 10-10)

39) Notwithstanding that no mandamus order or mandamus judgment, or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise the said order is null and void in that this honorable court had no power by mandamus to review the decision made final by statute, of officers having power to decide purely political questions.

40) Notwithstanding that no mandamus order or mandamus judgment or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise the said order is null and void as this Court had no power to delegate the duties of Ralph E. White, the Village Clerk and respondent herein to Joseph F. Janda, also a respondent herein, when Janda held no office of authority in said village, but having so delegated the duties, and having made the act to be performed not jointly but in the alternative it fixes no positive, clear, certain or specific duty upon either respondent.

42) This respondent, herein adopts and incorporates as a part hereof all the matters and things alleged in the respondents answers to the petition in mandamus.

43) This respondent, herein adopts and incorporates as a part hereof the answers filed herein by Joseph F. Janda respondent herein.

44) That notwithstanding that no judgment order or mandamus order or any peremptory writ of mandamus issued in pursuance to said order this respondent
118 further says that any invasion by this court of the executive department of the State government is not merely an erroneous decision, action or order, but is wholly void, of no effect and not binding on any person.

45) That notwithstanding that no mandamus order or mandamus judgment or peremptory writ of mandamus is-

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sued in pursuance to such order was ever served upon this respondent personally or otherwise, this respondent says that: Article III of the Constitution of the State of Illinois provides as follows:

Article III.

Distribution of Powers.

Department of Government

"The powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

And this respondent shows that as Village Clerk of the Village of Lyons he is an officer of the executive department of the Constitutional government of the State and as such while in the due exercise of his legal duties he is not amenable to the control or direction of the judicial department of the government, and that the jurisdiction of the courts of Illinois does not extend to modify, change or excuse the statutory duties of municipal officials, nor have the courts of this State any power or jurisdiction to compel a municipal officer of the executive department to take or do illegal act or an act in violation of his sworn duty or his official oath.

46) This respondent answering said rule further says: That mandamus has no jurisdiction to create new
119 duties nor enforce illegal acts but only to enforce the performance of legal duties where the performance of legal duties is refused.

47) This respondent answering said rule further says that when the said Lyons Municipal Electoral Board filed its ruling and decision upon said objections to the said "Regular Peoples Party" certificate of nominations or nomination papers with the Village Clerk, it became the duty of this respondent to prepare the official ballots for said election in accordance with the ticket legally filed, and furnish them for the judges of election of said village pursuant to the statute, and this was the duty under the law imposed upon this respondent.

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48) This respondent answering said rule further alleges that this court was advised by the pleadings on file herein, which fact stood admitted, that the objections to the said certificates of nomination or nomination papers of the "Regular Peoples Party" had been sustained by the final action of the said Lyons Municipal Electoral Board and that pursuant to the decision of said Electoral Board no such "Regular Peoples Party" existed for purposes of said election.

49) Answering said rule further this respondent alleges that no legal duty rested upon him as Village Clerk to print a ballot for said election with the names of the candidates of the said "Regular Peoples Party" ticket and that this court had no jurisdiction to enter any mandamus order whereby to require this respondent to violate the election laws in such case made and provided and to do an act illegal and in violation of law.

50) Notwithstanding that no mandamus order, mandamus judgment or peremptory writ of mandamus
120 issued in pursuance to said order was ever served upon this respondent and further answering said rule says:

That in entering said mandamus order the court invaded the jurisdiction of the executive department the government and the order directing the issuance of said writ to destroy ballots already printed and to print new ballots with "Regular Peoples Party" ticket thereon is void and of no force or effect.

Wherefore, this respondent, by reason of the above and foregoing answer prays this honorable court for an order dismissing the rule herein described.

Ralph E. White,
Ralph E. White,
Respondent.

## EXHIBIT 21.

Order entered may 29, 1945: Ordered that defendants post $2,500 appeal bond with sureties to be approved on May 31, 1945. That such bond stall all contempt proceedings, and rule to show cause is continued generally until appeal from mandamus order entered April 13, 1945, is decided in the Appellate Court; that such $2,500 appear bond is made a supersedeas to which order petitioners object and except.

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Enter:

Joseph A. Graber,
Judge.

121 EXHIBIT 22.

MR. PRESIDING JUSTICE FRIEND DELIVERED THE OPINION OF THE COURT. (43493)

(1) By an order here entered on July 30, 1945 this cause was consolidated with cause No. 43515, and the parties were allowed to file one set of abstracts and briefs. This is an appeal from a judgment in mandamus; cause No. 43515 is an appeal from a contempt proceeding based on the mandamus judgment. The appeal in the mandamus case is by both defendants from a judgment ordering them "and each of them (so far as either of them may act or purport to act as said Village Clerk)" to place the Regular People's Party ticket on the ballot for the village election in Lyons, Illinois held on April 17, 1945. The appeal in the contempt case is by Ralph E. White from an order adjudicating him as Village Clerk to be in contempt of court for failing to obey the order to place the designated ticket on the ballot for said election. Because the ticket was not placed on the ballot by etiher defendant, a rule to show cause was entered on both of them. Each separately moved to discharge the rule, and their motions being denied, they separately answered the rule. The court, pursuant to a hearing on the rule to show cause, discharged the rule as to Joseph F. Janda and adjudicated the defendant Ralph E. White to be in contempt of court for failure, as Village Clerk, to comply with the mandamus judgment, and fixed his punishment at six months imprisonment in the County Jail of Cook County.

(2) The facts, so far as they are essential to a consideration of the issues involved, disclose that the Regular People's Political Party and the Progressive Citi-
122 zens Ticket Political Party in the Village of Lyons, by caucus, nominated separate candidates for certain village offices to be filled at an election scheduled for April 17, 1945. Certificates of nominations of the candidates on both tickets were duly filed in the office of the Village Clerk. The relators herein were the candidates on the Regular People's Party ticket. Among the candidates on the opposing ticket

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were Theofil T. Bulat, who was running for reelection to the office of Village President, and Joseph F. Janda, one of the respondents, who was a candidate for the office of Village Clerk.

(3) Objections were filed to the candidates on the Regular People's Party ticket on the sole ground that the population of the Village of Lyons exceeded 5000, and that therefore under the controlling statute the Regular People's Party, which was an established political party, could not nominate by caucus. Section 10-1 of the Illinois Election Code (Ill. Rev. Stat. 1945, ch. 46) provides that an established political party may nominate candidates for village offices by caucus where the population is less than 5000.. Section 1-9 of the Cities and Villages Act (Ill. Rev. Stat. 1945, ch. 24) contains the following provision: "Whenever in this Act any provision thereof is based upon the number of inhabitants, the number of inhabitants of the municipality shall be determined by reference to the latest consus taken by authority of the United States or this State, or of that municipality. It is the duty of the secretary of state, upon the publication of any State or United States census, to certify to each municipality the number of inhabitants, as shown by that census. And the several courts in this state shall take judicial notice of the population of any municipality, as the population appears from the latest Federal, State, or municipal census so
123 taken." No state or municipal census of the Village of Lyons has been taken since the Federal census of 1940, which shows the population of the village to be 4960. That is the only evidence of any official census in the record.

(4) On March 23, 1945 the objections to the Regular People's Party candidates were presented to what purported to be a Municipal Officers Electoral Board convened pursuant to the provisions of section 10-9 of the Election Code and consisting of Edmund K. Jarecki, County Judge, Chairman, in lieu of the President of the Village, who was a candidate for reelection and thereby disqualified to serve on the board, the respondent Ralph E. White, who represented himself to be the Village Clerk and was also acting Chief of Police of the village, and Louis Hoffman, a member of the Board of Trustees of the Village of Lyons. John Daly, assistant attorney for the Election Commissioners, informed the board that the last Federal census showed the

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population of the Village of Lyons to be 4960, and expressed the opinion that the last Federal census figure governed the action of the board. At that proceeding the only other reference to a population census figure was made by respondent White, who, without any evidentiary support, casually remarked that "according to the OPA statistics there is approximately 6,200, I believe."

(5) Judge Jarecki, the Statutory Chairman of the board, thereupon voted to place the Regular People's Party candidates on the ballot, while White and Hoffman voted to keep them off. Before the board had announced its decision, the Chairman at the request of counsel for the relators, agreed to suspend issuing any order until March 27, 1945 so as to give relators an opportunity to have decided in a mandamus proceeding then pending before the 124 Circuit court of Cook County the question whether Ralph E. White was the Village Clerk, since this would determine his right to act as a member of the board.

(6) The relators in this proceeding were the plaintiffs in the Circuit court mandamus case and Judge Edmund K. Jarecki was the defendant in that proceeding, which came on for hearing on March 26, 1945. The Circuit court there found that Ralph E. White was not the Clerk of the Village of Lyons and therefore had no authority to act as a member of the board, and entered its judgment as follows: "WHEREFORE, the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons, is hereby directed and ordered to enter a finding in the proceedings of the said Board, to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law, and that the said Electoral Board, therefore, should be dissolved; and the said defendant is further ORDERED AND DIRECTED, forthwith, to return all certificates of nomination, or nomination papers and other documents now in his possession as such purported Chairman of said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve the said purported Electoral Board."

(7) On March 26, 1945, being the same day on which

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the foregoing judgment in mandamus was entered in the Circuit court, and in compliance therewith, Judge Jarecki returned the nomination papers in his possession to the Village Clerk, and advised him that "the mandamus action automatically ends the action of the Electoral Board."

125 (8) The following day White and Hoffman, accompanied by Joseph F. Bulger, attorney for the Village of Lyons, called upon Judge Jarecki, who advised them that the board was dissolved; that there was no board in existence; and that no further action was to be taken by it. Following this conference, White and Hoffman, accompanied by Mr. Bulger, without notice to the relators of their place of meeting, immediately proceeded to room 233 in the County Building, and held what purported to be a meeting of the Municipal Officers Electoral Board. They decided that the vote taken at the meeting on March 23, 1945, of what purported to be the Municipal Officers Electoral Board, was legal and binding, and authorized Ralph E. White to enter such findings upon the records of the board and transmit the decision to candidates of the Regular People's Party, the Village Clerk and the objectors to the certificates of nomination. That meeting on March 27 was held in disregard of the Circuit court order of March 26, 1945 and Judge Jarecki's direction that what purported to be an electoral board be dissolved; it was held without the presence of Judge Jarecki and without notice to the relators; and evidence introduced at the hearing before Judge Jarecki on March 23, 1945 showing the population of the Village of Lyons according to the last census taken was completely ignored.

(9) On March 28, 1945 White returned the certificate of nomination to the Regular People's Political Party to that party with the rulings adopted by him and Hoffman on March 27, 1945 in room 233, County Building, in the absence of Judge Jarecki, and at the same time White transmitted the same ruling to all candidates on the Regular People's Party ticket.

(10) On April 3, 1945 the Regular People's
126 Party's candidates made a demand in writing on both respondents White and Janda that relators' names be placed on the ballot, and when White and Janda persisted in their refusal to comply with that request, relators filed the instant mandamus proceeding in the Superior court on

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April 5, 1945. After the cause came on for hearing on April 12, 1945 before Judge Joseph Graber, he entered an order the following day *nunc pro tunc* as of April 12, 1945 directing White and Janda and each of them (so far as either of them may act or purport to act as Village Clerk) to print the names of the Regular People's Party's candidates on the ballots to be used in the April 17 election and to destroy any ballots already printed. On April 13, 1945 the respondents filed their formal notice of appeal from the judgment order of mandamus and served notice on counsel for relators of a motion for April 16, 1945 to fix the amount and conditions of the appeal bond.

(11) It appears that on April 13, 1945 relators made repeated attempts to serve on respondents the writ of mandamus issued by the Superior court. They found that White had not been in his place of employment that entire day, nor did he appear at the office of the Village Clerk or at the Police Department. No one responded to repeated knockings at the door of White's home that afternoon and evening, and one of White's neighbors informed persons who attempted to serve the writ that he had gone away on a three-day vacation. With respect to Janda, no one answered the door of his residence on the afternoon of April 13, but on the evening of that day his niece, who was a person over 21 years of age and a member of his household, came to the door and told the persons attempting to serve the writ that Janda had gone somewhere, that she did
127 not know where nor did she know when he would return. Later that evening another attempt was made to serve the writ, and his niece, although she looked through the glass door, would not open it or admit the persons attempting to serve the writ. Still later, at 11:00 o'clock in the evening, in response to a third visit, his niece said that Janda had not returned and that she did not know when he would be back. When an attempt was then made to serve the writ by leaving a copy with her, she refused to open the door and ordered the person attempting to serve the writ to leave the premises. The following morning, April 14, the writ was served on Janda by leaving a copy of it with his niece.

(12) As the result of the foregoing circumstances the names of the Regular People's Party's candidates did not appear on the ballot for the election, and the only names

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that appeared on that ballot were those of the candidates of the Progressive Citizens' ticket.

(13) Since the election has taken place the mandamus case is moot except for the question whether the court had jurisdiction, the determination of that issue being essential for the disposition of the contempt proceeding. The principal ground urged for reversal is that the Municipal Officers' Electoral Board is given exclusive and final jurisdiction to decide whether a ticket shall go on the ballot; that where the board has acted, neither the Circuit nor the Superior court has jurisdiction to order a Village Clerk to disregard its action; and that to do so is to invade the executive department of the government, in violation of article III of the Constitution, which forbids one department from assuming the powers of another. Since neither of these appeals was prosecuted to the Supreme court, which has
128 exclusive jurisdiction to determine constitutional questions, we are called upon to determine only whether the judgment of the Superior court in the mandamus suit was void for all purposes, thus making it impossible to predicate contempt proceedings on a refusal to obey the mandamus judgment.

(14) Respondents contend that courts have no jurisdiction to review the judgment of an electoral board, and in support of that contention they rely upon *People ex rel. Murray* v. *Rose,* 211 Ill. 249, *People ex rel. McKinley* v. *Rose,* 211 Ill. 252, *People ex rel. Williams* v. *Rose,* 211 Ill. 259 and *People ex rel. Perry* v. *Koerner,* 365 Ill. 521, purporting to construe the provisions of sections 10-9 and 10-10 of the Election Code. The pertinent part of section 10-10 contains the following provision: "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nomination papers on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final."

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The decisions upon which respondents rely can be readily distinguished under the facts in this proceeding. Since no decision on the objections in the instant case was made by a validly constituted electoral board, relators had the right to have their names placed upon the ballot to be furnished the voters, and this was a right that the Superior court,
129 under the holding in *People ex rel. Powell* v. *Hartley*, 170 Ill. 370, had jurisdiction to enforce by mandamus. In that case the Supreme court, holding that the issuance of a writ of mandamus was proper to compel a county clerk to place upon the ballot the names of nominees entitled to be on it, made the following pertinent observation: "To hold otherwise would place it within the power of the officials charged with the duty of printing the ballots, to disfranchise, for all practical purposes, a great number,—perhaps a majority,—of the legal voters in their counties." With the exception of *People ex rel. McKinley* v. *Rose*, none of the cases cited by respondents is applicable to the jurisdictional question here presented. In *Murray* v. *Rose* and *Williams* v. *Rose* decisions on objections to nominees had been made by validly constituted electoral boards, and in *Perry* v. *Koerner*, where a State Primary Certifying Board, consisting of the Governor, Secretary of State and State Auditor, had already certified Perry's name for the ballot and the other candidate subsequently filed a petition for mandamus ordering the county clerk to omit his opponent's name from the ballot, the writ was denied because the petition failed to make parties defendant the members of said board and the party whose name it sought to have omitted from the ballot. In *McKinley* v. *Rose* objections to certificates of nomination were presented to the county judges of the two counties comprising a senatorial district, who were unable to agree on the disposition of the objections, and one of the candidates applied to the Supreme court for a writ of mandamus directing the Secretary of State to take steps to place his name on the ballot. The petition was denied only because it failed to allege that the parties who called the convention which nominated the relator had
130 authority to call it, but the opinion impliedly recognizes the proposition that where a board authorized to pass on objections failed to arrive at a valid decision, the courts may determine the rights of candidates to have their names on the ballots and to enforce those rights by writ of mandamus.

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(15) With respect to the provisions of the statute hereinbefore quoted, it will be observed that the electoral board is vested with the power and duty to decide whether or not the certificate of nomination or nomination papers on file is valid or whether the objections thereto should be sustained, and although it provides that the decision of a majority of the electoral board shall be final, it must have been the intention of the legislature to provide that it "shall be final" only when it has been arrived at by a legally constituted board, in a legal manner, pursuant to competent evidence, without the abuse of discretion, not arbitrarily or fraudulently. If the statute were to be construed otherwise, the final decision of the electoral board, even though fraudulent, arbitrarily arrived at or based upon a clear abuse of discretion and without any evidence to support its decision, would vest those members of the board who happened to have control of the political machinery, with power to disfranchise candidates of an opposing party who might conceivably be the choice of a majority of the electorate and thus perpetuate the members of the controlling political power in office. This presents a challenge to justice. Our democratic institutions are based on free elections, and our laws and traditions recognize the rights of persons who are qualified and who comply with statutory provisions to present themselves for public office. It certainly could not have been the intention of the legislature to defeat these inviolate rights by vesting the electoral board with a final decision where it clearly appears that its ruling is arbitrary or predicated upon an abuse of power or even fraudulent.

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(16) In the case at bar the mandamus judgment in the Circuit court specifically found that White was not the Village Clerk, thereby disqualifying him from membership on the electoral board, and consequently that the board was not legally constituted to pass on the objections to relators' nomination papers. However, assuming that the decision had been made by a legally constituted board, we are still of the opinion that the Superior court had jurisdiction to review by mandamus the action of a board which was so clearly an abuse of power and so arbitrary as to amount to fraud. The sole objection to the nomination of the relators was that the population of the Village of Lyons exceeded 6000 and therefore they could not be nominated by the caucus of an established political party in the village.

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There was no evidence to support this finding. The only evidence adduced before the board was that the Federal census showed the population of the village to be 4960, and in the absence of any countervailing proof that a state or municipal census taken since 1940 disclosed the population to be in excess of 5000, the electoral board was bound by that evidence and had no alternative except to allow the nomination papers of the relators to be filed. The right of courts to review by mandamus the acts of public officers where they have acted arbitrarily or in abuse of discretion is well settled by numerous decisions in this state holding that if a discretionary power is exercised with manifest injustice, the courts are not precluded from commanding its due exercise, and as stated in *Dental Examiners* v. *The People,* 123 Ill. 227, "they will interfere, where it is clearly shown, that the discretion is abused. Such abuse of
132 discretion will be controlled by mandamus." Because of the striking similarity between the motives of the dental examiners in that case and the apparent motives of two of the members of the electoral board, White and Hoffman, the following comments of the Supreme court are in point: "If these averments are true, the members of the State board are abusing their discretion and making an unjust use of it. They have a right to decide whether the college, at which an applicant for license has graduated, is reputable or not. But they must decide that question upon just and fair principles. * * * If four of the five members, which compose the board, are instructors in a particular college, and if they are making use of their power under the State law to build up their own institution and crush out its rival, they are acting from motives of self-interest and not in the interests of the public. It can not be tolerated that licenses should be withheld for any such unworthy reasons." The reasoning of the court in that case is applicable to the facts of this proceeding. We recently decided in two cases where State boards had refused examination admission to physicians who desired to practice medicine in the State of Illinois that if their ruling was arbitrary or an abuse of discretion, the court could control their action by mandamus, and the numerous cases cited and reviewed in those decisions amply support the conclusions there reached. *People ex rel. Schutz* v. *Thompson,* 325 Ill. App. 95; and *Schleifer* v. *Department of Registration and Education of Illinois,* 326 Ill. App. 259 (Abst.).

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(17) The plain facts of this case clearly indicate that instead of permitting the names of all candidates duly nominated to appear on the ballot so that the voters could decide who their village officers should be, the purported electoral board, which was held by the order of the
133 Circuit court and the Statutory Chairman of the board to be illegal, entered into an undertaking which was in the nature of a conspiracy to keep the Regular People's Political Party candidates off the ballot in order to insure the election of the candidates of the Progressive Political Party with which respondents were affiliated. This was nothing short of an infamous and disgraceful scheme to steal an election. Three able and experienced jurists, Judges Graber, Fisher and Jarecki, all of whom had occasion to inquire impartially into the facts, would not countenance the brazen scheme. We think it would be an extremely dangerous doctrine, indeed, to hold that in the light of the record presented, this illegal board could hold a rump session, and without any supporting reason, disqualify duly nominated candidates of the opposing party.

(18) Arguments of respondents as to the uncertainty of the mandamus judgment are beside the point, because even if it were erroneous, that circumstance would not render it void. Nor would the fact that the mandamus writ was not served on White, excuse him from obeying it under the circumstances of this case, because he had full knowledge of the entry of the judgment, having on the day following the entry of the mandamus judgment filed his formal notice of appeal and served notice on counsel for relators of a motion to fix the amount and conditions of the appeal bond.

(19) We therefore hold that the Superior court had jurisdiction to review these proceedings by mandamus, and the judgment of that court in the mandamus proceeding is accordingly affirmed.

*Judgment Affirmed.*

Scanlan and Sullivan, JJ., concur.

134 EXHIBIT 23.

MR. PRESIDING JUSTICE FRIEND DELIVERED THE OPINION OF THE COURT. (43515)

(1) This appeal was consolidated with cause No. 43493. In that case the principal question presented was whether

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the Superior court had jurisdiction of the mandamus proceeding brought by relators. The facts and circumstances of these two proceedings are sufficiently set forth in our opinion in that case and need not be repeated here. Inasmuch as we have held that the Superior court had jurisdiction of the mandamus case, the only question presented upon this appeal is whether disobedience of the mandamus judgment entered in case No. 43493 constitutes contempt.

(2) The cases in this state are uniformly to the effect that it is contumacious to disobey an order which the court has jurisdiction to enter, even if the order is clearly erroneous. In the recent case of *Cummings-Landau Co.* v. *Koplin*, 386 Ill. 368, the court held that "The principle is of universal force that the order or judgment of a court having jurisdiction is to be obeyed, no matter how clearly it may be erroneous. This is the rule whether the contempt be technically defined as criminal or civil. On an appeal from an order committing a defendant for contempt for the violation of an order of the court, no error in such prior order can be considered. The only question as to such prior order that can be considered is whether the court had jurisdiction to make it." In *Ash Co.* v. *Garment Workers' Union*, 290 Ill. 301, the court said that "It is so universally settled law as to require no citation of authorities, that the 135 orders and judgments of a court having jurisdiction must be obeyed until reversed or set aside in a direct proceeding for that purpose, and in a proceeding for contempt for violating an injunction it cannot be urged that granting the injunction was erroneous. Unless absolutely void it is binding on the parties and must be obeyed."

(3) Since, in our opinion, the court had jurisdiction in the mandamus case, as heretofore stated and held in opinion No. 43493, defendant was bound to obey the judgment, and inasmuch as he failed and refused to do so, the finding and order holding him in contempt was properly entered and is accordingly affirmed.

*Order Affirmed.*

Scanlan and Sullivan, JJ., concur.

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## EXHIBIT 24

Resolution

Whereas, the population of the Village of Lyons has been increasing for the past two years and a census has not been taken for some time; and

Whereas, because of the war the Defense Corps. of the Office of Civilian Defense have completed a survey and Census in co-operation with the Village Officials, and

Whereas, it is shown by a canvass of the registration returns of the various enumerators that the population shows the sum to be a total of 5424 persons residing in this Village at this time,

Now therefore, Be it resolved by the President and Board of Trustees, that the registration and enumera-
136 tion of persons residing in the Village of Lyons, by the Defense Corps of the Office of Civilian Defense of Lyons, Illinois, which census has been taken under the auspices and in co-operation with the Village Officials, showing the population to be a total of 5424 persons, and the same is hereby adopted as the official Village Census of the Village of Lyons, Illinois.

That copies be filed with the Secretary of State and the U. S. Dept. of Commerce.

Passed and adopted this 11th day of August 1942

Attest
Ralph E. White
Village Clerk

Approved
Theofil T. Bulat
President

Certification

I Joseph F. Janda, Clerk of the Village of Lyons and keeper of the records, ordinances, resolutions, minutes and seal of said Village, do hereby certify that the attached resolution is a true and correct copy of an original on file in the office of Clerk and in the book of ordinances. Said resolution was passed by the President and Board of Trustees on the 11th day of August A. D. 1942.

Given under my hand and seal this 6th day of November A. D. 1947.

Joseph F. Janda
Village Clerk.

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137 EXHIBIT 25.

CONTEMPT MITTIMUS.

People of the State of Illinois *ex rel.* Lyman F. Martin, *et al., plaintiffs* *vs.* Ralph E. White *et al.*, defendants. } 45 S 6174

State of Illinois,
County of Cook—ss.

*The People of the State of Illinois, to the Sheriff of Cook County, Greeting:*

WHEREAS, On the 1st day of June, A. D. 1945, by a certain Order made in the Superior Court of Cook County, State of Illinois, by the Hon. Joseph A. Graber, one of the Judges of said Court in a certain cause lately pending in said Court on the law side thereof, wherein People ex rel. Lyman F. Martin *et al*, are plaintiffs and Ralph E. White is defendant, it was Ordered that Ralph E. White be committed to the County Jail of Cook County, Illinois, for a period of six (6) months, there to remain, charged with the contempt, mentioned in such Order, or until released by due process of law, and that a warrant for that purpose issue.

NOW WE COMMAND YOU, That you take the body of the said Ralph E. White and him closely and safely keep in your custody in the County Jail of Cook County for a period of six (6) months, or until released by due
138 process of law; and you are to return this Writ forthwith to this Court with an endorsement thereon, showing in what manner you shall have executed the same.

Witness: Henry Sonnenschein, Clerk of said Court, and the Seal thereof, at Chicago, in said County, (Seal) this 10th day of July, 1947.

Henry Sonnenschein,
Clerk.

45 S 6174
People of the State of Illinois *ex rel.*
Lyman F. Martin *et al.*
*vs.*
Ralph E. White, *et al.*

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Sheriff's Fees
Service $2 00
Mileage 50
Return 50
Total 3 00 Fees
Irving W. Fisherman
160 N. La Salle
Central 0550

Released to custody of his atty, Joseph I. Bulger, until Friday July 25 by order of Judge Wm. V. Brothers. 7-24-47.

Received 1947 Jul 11 PM 3 00 Michael Walsh Sheriff

Respectfully submitted,
JOSEPH I. BULGER,
ODE L. RANKIN,
*Attorneys for Petitioner.*

139 And on the same day, to wit, on the 19th day of December, 1947, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

140 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—47 C 1832) • •

On motion of the petitioner by Ode L. Rankin and J. I. Bulger, his attorney, it is

Ordered that rule to show cause issue herein directed to William J. Touhy, States Attorney, directing the said William J. Touhy as States Attorney, to appear before the Honorable Michael L. Igoe, Room 627 United States Court House on Tuesday, December 23, 1947, at 10:00 o'clock A. M., and show cause if any there be why a Writ of Habeas Corpus should not issue herein.

141 And afterwards on, to wit, the 29th day of December, 1947 came the Respondent by his attorneys and filed in the Clerk's office of said Court his certain Answer To Rule To Show Cause And Motion To Dismiss Petition in words and figures following, to wit:

142 IN THE DISTRICT COURT OF THE NORTHERN DISTRICT
At Chicago, Illinois.
• • (Caption—47 C 1832) • •

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## ANSWER TO RULE TO SHOW CAUSE AND MOTION TO DISMISS PETITION.

Now comes Elmer Michael Walsh, Sheriff of Cook County, Illnois, respondent herein, by William J. Tuohy, State's Attorney of Cook County, Illinois, his Attorney, and files his Answer to the Rule to Show Cause why a Writ of Habeas Corpus should not issue herein, and his Motion to Dismiss the Petition filed herein, and alleges:

That Ralph E. White, the relator herein, is in his custody by and under the authority of a mittimus issued out of the Superior Court of Cook County, Illinois, being and containing a copy of a judgment or order in a mandamus proceedings in said Superior Court, adjudging the relator, Ralph E. White to be in contempt of the Superior Court and imposing upon him a sentence of six (6) months in the County Jail, a copy of said mittimus is attached to said
143 relator's petition and by reference thereto, made a part thereof.

This respondent further alleges in answer to the rule to show cause that when the Superior Court entered said judgment and sentence against the relator, as aforesaid, it had full jurisdiction, in that it had jurisdiction of the person of the relator, he having appeared in said mandamus proceedings filed his answer therein and prosecuted appeals from said judgment and sentence to the Courts of Review of the State of Illinois;

And this respondent alleges that the Superior Court of Cook County had jurisdiction to enter the particular judgment and sentence it did enter in said mandamus proceedings, the Superior Court being, by law, a Court of general jurisdiction, having common law and statutory jurisdiction in mandamus proceedings;

And this respondent alleges that the Superior Court had jurisdiction of the subject matter of said cause, to-wit: said mandamus proceedings, in that the pleadings showed upon their face that the issues presented to the Superior Court involved the question of the legality of a certain Election Board or purported Election Board, of the Village of Lyons, Cook County, Illinois, and the legality of the acts of certain Officials of the Village of Lyons, Cook County, Illinois, in connection with an election to be held at Lyons, Cook County, Illinois, in the month of April, 1945;

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That prior to the judgment and sentence against the relator in the Superior Court, a mandamus proceedings
144 had been filed in the Circuit Court of Cook County, Illinois by and on behalf of the Regular Peoples' Party Ticket of Lyons, Illinois against said Election Board and Election Officials of Lyons, involving the acts of the Election Board and Officials pertaining to said Election for the Village of Lyons, and on March 26, 1945, the Circuit Court entered an order showing that said Election Board was not lawfully constituted and ordered its dissolution, and that it should take no further action; that in violation of this order, the relator and others purporting to act as the Election Board of Lyons, sustained objections to the nomination of the candidates of the Regular Peoples' Party Ticket, and proceeded with the election with the result that the nominees of the Regular Peoples' Party Ticket were not placed on the ballots for said election, the only names appearing on the ballots were those of the candidates of the Progressive Citizens' Ticket. One of them was Joseph F. Janda, one of the respondents in the mandamus proceedings in the Superior Court, and it is contended by the relator herein that the Circuit Court order was void.

This respondent further alleges that on April 13, 1945 the Superior Court, in the Mandamus proceedings, entered an order upon the relator, Ralph E. White and Joseph F. Janda so far as either of them may act or purport to act as said Village Clerk of Lyons, to place the Regular Peoples' Party Ticket on the ballot for the election in said Village of Lyons to be held on April 17, 1945. This order of the Superior Court was not complied with by either of said parties; that on April 18, 1945 the day after said
145 election, a rule to show cause why he should not be held in contempt of the Superior Court was entered therein against the relator (Ralph E. White) and subsequently an order was entered by the Superior Court adjudicating him as Village Clerk of Lyons, to be in contempt of Court for failing to obey said order, to which rule he filed an answer and upon issues joined, he was found guilty of contempt of Court and sentenced to the Cook County Jail for six (6) months;

And this respondent alleges that the issues herein involve the actions of said purported Election Board and Members thereof, and as to whether they acted arbitrarily in abuse

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of their discretion or fraudulently, illegally and in violation of a legal Court Order. Hence, it was proper, legal and jurisdictional for the Superior Court to adjudicate said issues.

Respondent further answering alleges that said mandamus, judgment and sentence are legal and valid and have been so declared by the Courts of Review of the State of Illinois, the relator having appealed to the Illinois Appellate Court, which affirmed said judgment and sentence, their opinion being reported in 329 Illinois Appellate, Page 81. Review was then sought in the Illinois Supreme Court and the United States Supreme Court, but appeal was refused in both Courts; that subsequently relator filed Habeas Corpus proceedings in the Circuit Court of Cook County, Illinois and an original petition for a Writ of Habeas Corpus in the Supreme Court of Illinois; and this respondent alleges that both petitions were dismissed and no Certiorari proceedings were filed by the relator in the
146 Supreme Court of the United States to said Courts of Illinois;

And this respondent further alleges that subsequent to said Habeas Corpus proceedings, the relator filed a petition for a Writ of Error in the nature of a Petition for a Writ of Coram Nobis in Cook County, Illinois, but said petition was dismissed; and respondent alleges that the relator has not appealed said cause to the Courts of Review of the State of Illinois, nor has he filed Certiorari proceedings to review said action in the Supreme Court of the United States, and therefore, this respondent alleges that the relator has failed to exhaust his remedies in the State of Illinois.

Respondent alleges that said sentence imposed on the relator, Ralph E. White, as aforesaid, is legal and valid and has not been served.

Further answering, this respondent alleges that all questions, legal or otherwise, heretofore adjudicated between the parties herein were controlled by State Statutes and were decided under State Statutes and the Common Law relating to the law of mandamus to the extent that it has been adopted by the State of Illinois, and all decisions between said parties were based on adequate State grounds; that no federal question was raised in any of said proceedings; and respondent alleges that the Petition herein does

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not raise a federal question which is necessary for the decision of the issues formed herein, therefore, this Court has no jurisdiction.

147 Wherefore, this respondent having fully answered prays this Court to dismiss the petition for a Writ of Habeas Corpus heretofore filed herein.

Elmer Michael Walsh, *Sheriff of Cook County, Illinois*
By William J. Tuohy,
*State's Attorney of Cook County*
By James V. Cunningham,
*Assistant State's Attorney.*

148 And, to wit, on the 29th day of December, 1947, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

149 In the District Court of the United States
* * (Caption—47 C 1832) * *

This cause now coming on for hearing on the rule entered herein to show cause come the parties pro se and/or by counsel and said hearing proceeds and the Court having now heard the argument of counsel on the answer to the rule to show cause and motion of the respondent to dismiss the Petition for a Writ of Habeas Corpus and being fully advised in the premises it is

Ordered that said motion to dismiss be and it is hereby overruled and it is

Further Ordered that a Writ of Habeas Corpus as prayed in the Petition therefor issue forthwith returnable before this Honorable Court in Room 627 United States Court House, on December 30, 1947, at 10:00 o'clock A. M., and it is

Further Ordered that the Attorney General of the State of Illinois be and he is hereby given ten (10) days from this date within which to file answer herein and that this cause be and it is hereby set for hearing on the Writ of Habeas Corpus and answer on January 26, 1948 and it is

Further Ordered that bond of the relator be and it is hereby fixed at the sum of Twenty-Five Hundred Dollars ($2500.00).

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150 And afterwards on, to wit, the 12th day of February, 1948 there was filed in the Clerk's office of said Court a certain Transcript of Proceedings Had on December 29, 1947 in words and figures following, to wit:

151 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

152 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

## PETITION FOR WRIT OF HABEAS CORPUS TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause taken before the Hon. Michael L. Igoe, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on Monday, December 29, 1947, at 10:00 o'clock a.m.

APPEARANCES:

Mr. Ode L. Rankin, and
Mr. Joseph I. Bulger,
appeared on behalf of the Petitioner;
Mr. William J. Tuohy, States Attorney of Cook County, by
Mr. James V. Cunningham, and
Mr. George B. Duggan, Assistant State's Attorney,
appeared on behalf of the Respondent.

* * * * * * * *

153 The Court: What do you say about this federal question involved here? He says you do not have a federal question.

Mr. Rankin: Whenever a proceeding is of such a nature that it is apparent that the man did not get a fair trial upon the whole record and did not get a hearing upon the whole record, then that raises the question of due process of law. This case is an example of it, where first the Court held that he was not guilty and then they filed a petition and then they finally put him in prison because he was guilty; they rushed him through there in the Superior Court, one step after another, and then the Appellate Court did not give a fair analysis of this case and left out things they should have put in and misstated facts which should have been properly stated.

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When all of that is added up together it adds up to a case where there is just an absence of due process of law. The forms of the procedure do not spell due process of law, it is the substance of it. And in this case here the substance of this is that the men never had what is really due process of law.

The Court: I don't know what the facts are in this
154 case but it comes up on a petition seeking a writ of habeas corpus, and to that petition the State's Attorney, through Mr. Cunningham, has filed a motion to dismiss it on its face. That motion will be overruled.

Do you want this to stand as an answer then?

Mr. Cunningham: I don't know whether I will let that stand or not.

The Court: This motion will be overruled and the writ will issue.

I understand that the entire term that this man was sentenced to was only six months and he has been there six or seven weeks now, so we must either have a speedy hearing on this or an application for bail.

Mr. Rankin: I think there should be bail allowed and we should have a little time in which to prepare for the evidence which is necessary to adduce. I might say to the Court that I have a brief to be filed in the Supreme Court on the 15th, and another one in the course of preparation, and I am quite busy, and it would really convenience me if it could be set for after the 15th, but if it must be before we will do something about it.

The Court: There are some very important questions raised here. I simply cannot understand the situation
155 where one Court says he is not the Clerk of the Village, and in another Court he is proven to be the Clerk. In one Court he is punished for occupying a position which another Court says he never occupied. I think those matters ought to be gone into. I think this man is entitled to have a determination in the Federal Court of whether or not he has been incarcerated as the result of the operation of due process of law. That is the federal question that is involved here.

Mr. Cunningham: I had not gotten to that point. You made the remark that he had filed a writ of habeas corpus in the state court, and of course, that is all he did. He never went to the Illinois Supreme Court.

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The Court: This decision by Judge Rutledge says that that is enough.

Mr. Cunningham: He has not exhausted all of his remedies. That is the ironclad rule that has been laid down.

The Court: There is nothing else I can do. I just cannot brush aside representations that Mr. Rankin has made. He has been a member of the Bar for so many years that I cannot remember when he was not around here. He is an honorable and reputable member of the Bar. I do not
156 believe he is in here making these representations unless they are based on facts, and if they are based on facts, I think those facts should be inquired into to determine whether or not this man has been imprisoned as the result of the operation of what we Americans call "due process of law."

Your petition to dismiss will be overruled and the writ will be issued and it will be returnable when? We will fix the bail now, what should the bond be?

Mr. Rankin: It seems to me $1,000 is sufficient.

The Court: What was the bond that was fixed before?

Mr. Rankin: $5,000.

The Court: We will make it $2,500.

Mr. Rankin: How soon can he be brought in?

The Court: The writ will issue immediately and he can be brought in here tomorrow.

Mr. Cunningham: Then upon the return of the writ you will set the case down for hearing?

The Court: Yes.

Mr. Cunningham: And it won't be necessary for us to be here tomorrow because all you will do is fix the bond?

157 The Court: Yes. All we will do is to fix the bond. You want how long a time to answer?

Mr. Cunningham: That depends on when your Honor will hear the case, we are pretty busy, if you are going to hear it pretty soon, all right, as I do not want to delay the case on account of my answer.

The Court: Well, January 26th is Monday, and how soon would you want to file your answer?

Mr. Cunningham: I will file my answer within ten days, your Honor.

The Court: All right. Ten days in which to file an answer. And the case is set for the 26th of January, 1948.

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(Whereupon, an adjournment was taken in the above-entitled cause until Monday, January 26, 1948.)

158 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

## CERTIFICATE

I hereby certify that the above and foregoing is a full, true and accurate transcript of my original shorthand notes taken upon the hearing of the above-entitled case.

Thomas M. Ryan,
Official Court Reporter,
U. S. District Court,
Northern District of Illinois.

January 9, 1948.

159 And afterwards on, to wit, the 9th day of January, 1948 came the Respondent by his attorneys and filed in the Clerk's office of said Court his certain Return Of Respondent in words and figures following, to wit:

160 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

## RETURN OF RESPONDENT

Now comes Elmer Michael Walsh, Sheriff of Cook County, Illinois, respondent herein, by William J. Tuohy, State's Attorney of Cook County, Illinois, his Attorney, and files this his return to the Writ of Habeas Corpus heretofore issued herein, and alleges:

That Ralph E. White, the relator herein, is in his custody by and under the authority of a mittimus issued out of the Superior Court of Cook County, Illinois, being and containing a copy of a judgment or order in a mandamus proceedings in said Superior Court, Case No. 45 S 6174, adjudging the relator, Ralph E. White, to be in contempt for failure to obey an order of the said Superior Court and opposing upon him a sentence of six (6) months in the County Jail of Cook County, Illinois, a copy of said mittimus is attached to this return and made a part hereof.

161 This respondent further alleges that when the said Superior Court entered said judgment and sentence against

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the relator as aforesaid, it had full jurisdiction in that it had full jurisdiction of the person of the relator, he having appeared in said mandamus proceedings, filed an answer therein and prosecuted appeals from said judgments and sentence to the Courts of Review of the State of Illinois;

And this respondent alleges that said Superior Court had jurisdiction to enter the particular judgment and sentence it did enter in said mandamus proceedings; that the said Superior Court being by law a court of general jurisdiction having common law and statutory jurisdiction in mandamus proceedings under the laws of the State of Illinois;

And this respondent alleges that the said Superior Court had jurisdiction of the subject matter of said cause to file said mandamus proceedings in that the pleadings showed upon their face that the issues presented to the Superior Court involved the question of the legality of a certain Election Board or purported Election Board of the Village of Lyons, Cook County, Illinois, and the legality of the acts of the relator among others being or purporting to act as officials of the Village of Lyons, Cook County, Illinois in connection with an Election to be held at Lyons, Cook County, Illinois in the month of April, 1945;

162 That prior to the judgment and sentence against the relator in the Superior Court, as aforesaid, a mandamus proceedings had been filed in the Circuit Court of Cook County, Illinois by and on behalf of the Regular Peoples' Party Ticket of Lyons, Illinois against said Election Board and Election Officials of Lyons, involving the acts of the Election Board and Officials pertaining to said Election for the Village of Lyons, and on March 26, 1945 the Circuit Court entered an order finding that said Election Board was not lawfully constituted and ordered its dissolution and that it should take no further action; that in violation of this order, the relator and others purporting to act as the Election Board of Lyons, sustained objections to the nomination of the candidates of the Regular Peoples' Party Ticket, and proceeded with the election with the result that the nominees of the Regular Peoples' Party Ticket were not placed on the ballots for said election, the only names appearing on the ballots were those of the candidates of the Progressive Citizen's Ticket. One of them was Joseph F. Janda, one of the respondents in the mandamus proceedings in the Superior Court, and it is con-

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tended by the relator herein that the Circuit Court order was void; but this respondent denied that said order was void and alleges that the relator has failed to set up any facts in his petition showing that said order of the Circuit Court of Cook County was void;

And this respondent further alleges that the said Circuit Court of Cook County had full jurisdiction when it
163 entered the order in said mandamus proceedings, and that the Honorable Edmund Jarecki, Judge of the County Court of Cook County, defendant in said cause, complied with the order of said Circuit Court and returned all papers to the authorities of the Village of Lyons in compliance with said order, and refused to participate farther in the proceedings in connection with the Election in the Village of Lyons;

And this respondent further alleges that no appeal or review proceedings of any kind were taken from the mandamus order entered by the Circuit Court of Cook County, Illinois as aforesaid to any of the Courts of Review of the State of Illinois; and this respondent further alleges that subsequent to said mandamus order, a rule was entered by said Circuit Court against the relator herein and Joseph F. Janda, but that said rule was discharged, the said Joseph F. Janda and relator herein not having been made parties to said mandamus proceedings.

Further answering, this respondent alleges that the mandamus proceedings in the Superior Court of Cook County, Illinois, Case No. 45 S 6174 were filed in the month of April, 1945; and this respondent denies that the said Superior Court did not have a hearing in said cause, but alleges the fact to be that a full hearing took place in said cause before the Honorable Joseph Graber, Judge of said Superior Court; that evidence was introduced and arguments heard, and upon conclusion of said hearing, said Court entered an order upon the relator, Ralph E. White, and Joseph F. Janda so far as either of them may act or purport to
164 act as Village Clerk of Lyons to place the Regular Peoples' Party Ticket on the ballot for the Election in said Village of Lyons to be held on April 17, 1945. This order of the Superior Court was not complied with by either of said parties; that on April 18, 1945, the day after said Election, a rule to show cause why he should not be held in contempt of the Superior Court for failing to comply with

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its order was entered therein against the relator, Ralph E. White, to which rule he filed an answer, and upon issues joined the relator, Ralph E. White, was adjudicated by the said Superior Court to be the Village Clerk of said Village of Lyons, and he was found guilty of contempt of said Superior Court for failing to obey said order and was sentenced to the Cook County Jail for a term of six (6) months;

And this respondent further alleges that upon the hearing on said rule to show cause in said Superior Court, the relator, Ralph E. White, admitted that he was the Clerk of the Village of Lyons;

And this respondent further alleges that attached to relator's petition as Exhibit 24, is a resolution of the Village of Lyons, signed by the relator, Ralph E. White, as Clerk of said Village.

Further answering, this respondent admits that on March 23, 1945 a meeting of the purported Election Board of said Village of Lyons was held and objections to the placing of the candidates of the Regular Peoples' Party ticket on the ballot for said Election were sustained, and the meeting 165 of said purported Election Board was then and there adjourned until March 27, 1945; that on March 27, 1947, without notice to any of the interested parties, the purported Election Board met again without a Chairman, the Honorable Edmund Jarecki refusing to act on said Board in compliance with said Circuit Court order; and said purported Election Board then and there entered an order sustaining the objections to the nomination of candidates of the Regular Peoples' Party; and respondent alleges that subsequent to this action on, to-wit: March 26, 1945, the said mandamus order of the Circuit Court was entered holding that said Board was not lawfully constituted and should be dissolved; and respondent alleges that said action of the purported Election Board was illegal and void;

And this respondent further alleges that the issues herein involve the actions of the relator, Ralph E. White and Joseph F. Janda, individually, and Ralph E. White as purported member of the Election Board of said Village of Lyons, and as to whether they acted arbitrarily in abuse of their discretion or fraudulently, illegally and in violation of the said mandamus order of the Superior Court of

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Cook County, Illinois in said case No. 45 S 6174.

Respondent further answering alleges that said mandamus, judgment and sentence are legal and valid and have been so declared by the Courts of Review of the State of Illinois, the relator having appealed to the Illinois Appellate Court, which affirmed said judgment and sentence, their opinion being reported in 329 Illinois Appellate, Page 166 81. Review was then sought in the Illinois Supreme Court and the United States Supreme Court, but appeal was refused in both Courts; that subsequently, relator filed habeas corpus proceedings in the Circuit Court of Cook County, Illinois and an original petition for a writ of habeas corpus in the Supreme Court of Illinois, and this respondent alleges that both petitions were dismissed and no Certiorari proceedings were filed by the relator in the Supreme Court of United States to said Courts of Illinois for a review of said orders dismissing said habeas corpus proceedings;

And this respondent further alleges that subsequent to said habeas corpus proceedings, the relator filed a petition for a Writ of Error in the nature of a petition for Writ of Coram Nobis in Cook County, Illinois, but said petition was dismissed; and respondent alleges that the relator has not appealed said cause to the Courts of Review of the State of Illinois, nor has he filed Certiorari proceedings to review said action in the Supreme Court of the United States, and therefore this respondent alleges that the relator has failed to exhaust his remedies in the State of Illinois in accordance with the law of the United States contained in the decisions of the United States Supreme Court and the 167 United States Circuit Court of Appeals. This is strictly a federal rule and did not emanate from a State Statute or State decision.

We quote from some of the decisions, as follows:

In discussing the doctrine of exhaustion of remedies the United States Circuit Court of Appeals in Cain *vs.* Benson, 168 Federal (2nd), Page 882, decided October 2, 1947, said in denying relief in Habeas Corpus at Page No. 823:

> "Furthermore, it appears that the petitioner applied to the Circuit Court of Appeals in Jackson County for a writ of habeas corpus in 1943, which was denied, and the petitioner did not apply for relief in the United

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States Supreme Court from any order of the courts of Michigan. In this situation the law is clear that the district judge was without jurisdiction to entertain the petition under the authority of Mooney *vs.* Holohan, 294 U. S. 103; *Ex parte* Hawk, 321 U. S. 116; Dawsett *vs.* Benson, 6 Cir., 156 F. 2d 669."

In *Ex parte* Hawk, 321 U. S. 114, the United States Supreme Court in applying this rule stated:

"Ordinarily an application for habeas corpus by one detained under a state court judgment of conviction for crime will be entertained by a federal court only after all state remedies available, including all appellate remedies in the state courts and in this Court by appeal or writ of certiorari, have been exhausted. Tinsley *vs.* Anderson, 171 U. S. 101, 104; Urquhart *vs.* Brown, 205 U. S. 179; United States *ex rel,* Kennedy *vs.* Tyler, 269 U. S. 13; Mooney *vs.* Holohan, *supra* (294 U. S. 115);"

White *vs.* Ragen, 324 U. S. 760 went to the United States Supreme Court from the United States Circuit Court of Appeals from this the Seventh District. The Court said:

"A denial of certiorari by this Court in such circumstances does not bar an application to a federal district court for the relief, grounded on Federal rights, which the Supreme Court of Illinois has denied. But any other state remedies, if available, must be exhausted before any application to the Federal district court. *Ex parte* Hawk, *supra* (321 U. S. 116, 117)."

168 Further answering, this respondent alleges that all questions, legal or otherwise, heretofore, adjudicated between the parties herein were controlled by State Statutes and were decided under State Statutes and the Common Law relating to the law of mandamus to the extent that it has been adopted by the State of Illinois, and all decisions between said parties were based on adequate State grounds; that no question under the State or Federal Constitution was raised by the relator in any of said proceedings in the Circuit Court or Superior Court; and that no federal question was raised in any of said proceedings. Appeal from said contempt order was taken by relator to the Appellate Court of Illinois, which Court does not have jurisdiction of constitutional questions; and respondent alleges that the petition herein does not raise any federal question; and

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respondent further alleges that no federal question was necessary to a decision in the cases of said Circuit and Superior Courts, and that no federal question is necessary to a decision herein and none is raised by the relator in his petition; and this respondent alleges that because no federal question is raised or is necessary for a decision herein, the Writ heretofore issued should be quashed and the relator remanded.

Respondent further alleges that the rule requiring that a federal question must have been passed upon by the State Courts and must have been necessary for a decision in the State Courts is laid down by the United States Supreme Court in its decisions from which we quote, as follows: In the case of Williams *vs.* Kaiser, 323 U. S. 471, the United States Supreme Court said:

"It is suggested, moreover, that for all we know the
169 denial of the petition by the Supreme Court of Missouri rested on adequate State grounds. It is a well established principle of this Court that before we will review a decision of a state court it must affirmatively appear from the record that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was necessary to its determination of the cause. And where the decision of the state court might have been either on a state ground or on a federal ground and the state ground is sufficient to sustain the judgment, the Court will not undertake to review it." Citing a number of cases.

In the case of White *vs.* Ragen, 324 U. S. 760, which went to the United States Supreme Court from this jurisdiction, the United States Supreme Court said:

"Where the highest court (state) in which a decision could be had, considers and adjudicates the merits of a petition for habeas corpus, state remedies, including appellate review, are not exhausted so as to permit the filing of a petition for habeas corpus in a federal district court, unless the Federal question involved is presented to this Court on certiorari or appeal from the state court decision." • • • "In the face of the announcement, evidently intended to settle the practice upon petitions for habeas corpus in that court, and in the absence of any opinion indicating that decision in the present cases turned on a federal question, we can-

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not say that the refusal to entertain the petitions for habeas corpus in these cases does not rest on an adequate non-federal ground. For that reason, we must dismiss these writs of certiorari."

Respondent further alleges that the objections filed to the nominating petitions referred to above, raised only one question, to-wit: the question of what was the population of the Village of Lyons at the time; and respondent admits that the Illinios State Statute provided that in villages and cities with a population of over five thousand, candi-
170 dates for office could not be nominated at a caucus; and respondent alleges that no other question except the population was raised by said objections. The hearing on said objection took place on March 23, 1945, as aforesaid. The candidates of the Regular Peoples' Party Ticket were represented by Urban Lavery and Frank Lexa. No counsel appeared for the objection. The only evidence offered as to the population was the last United States Census, which showed that the population of the Village of Lyons was Four Thousand Nine Hundred and Sixty (4960), which being below five thousand, allowed candidates to be nominated by caucus;

And this respondent alleges that the resolution of the Village of Lyons, purporting to have been adopted August 11, 1942, was not offered in evidence at said hearing, nor was any evidence of said resolution offered. The first time this resolution was presented was at the hearing in the Coram Nobis proceedings referred to above; and this respondent further alleges that the question as to what was the population of the Village of Lyons at the time of the Election was not a federal question but was a condition of the election laws of the State of Illinois; and this respondent denies that the actions of said purported Election Board were legal; and neither admits nor denies that the relator filed or posted a list of registered voters of the Village of Lyons, but calls for proof thereof;

And this respondent alleges that it was the duty of the Village Clerk of Lyons to print the names of the candidates of the Regular Peoples' Party on the official ballot for said Election in compliance with the orders of the Court
171 heretofore referred to herein, but respondent alleges that relator failed to do so.

Respondent neither admits nor denies that relator and Joseph F. Janda filed a petition for a change of venue in

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said Superior Court mandamus proceedings, but calls for proof thereof; and respondent alleges that this question does not raise a federal question but was for the Superior Court to decide; that the mandamus proceedings in the Superior Court are independent of the mandamus proceedings in the Circuit Court and both proceedings were legal and valid, and the orders entered by said Courts in said proceedings were legal and valid;

And this respondent denies that the mandamus order in the Circuit Court was contrary to the express provisions of the Illinois Statute; and respondent denies that the decision of said purported Electoral Board was a legal adjudication of the issues before it and was res adjudicata; and respondent alleges that the jurisdiction of the said Superior Court in the mandamus proceedings was not dependent on or effected by the mandamus proceedings in the Circuit Court; that the mandamus order issued by the Superior Court, as aforesaid, was not served personally on the relator, but respondent alleges that he had notice of it and that he took steps to appeal by his counsel from said Superior Court order within forty-eight hours after said order was issued; and this respondent alleges that the said Superior Court did have full power and jurisdiction over said Electoral Board and had full jurisdiction to supervise its activities and to enter such orders as were warranted by law;

172 And this respondent denies that the relator was by Statute, obligated to comply with the ruling of the Election Board, in view of the fact, that the Superior Court had entered its mandamus order with directions, and said order and directions of the said Superior Court were with full Jurisdiction; and respondent denies that its order or orders therein were void; and respondent denies that the said action of the Superior Court is an invasion by said Court of the Executive Department of the State Government.

Further answering this respondent alleges that the question of the legality of said Election Board was fully discussed in the opinion of the Appellate Court of Illinois to which Court relator appealed his case. It is reported in 329 Ill. Appellate 81. The Court in its opinion said:

> "Since no decision on the objections in the instant case was made by a validly constituted electoral board, relators had the right to have their names placed upon

POOR COPY

the ballot to be furnished the voters, and this was a right that the superior court under the holding in People *ex rel.* Powell *vs.* Hartley, 170 Ill. 370, had jurisdiction to enforce by mandamus" • • •

"And although it provides that the decision of a majority of the electoral board shall be final, it must have been the intention of the legislature to provide that it "shall be final" only when it has been arrived at by a legally constituted board, in a legal manner, pursuant to competent evidence, without the abuse of discretion, not arbitrarily or fraudulently. If the statute were to be construed otherwise, the final decision of the electoral board, even though fraudulent, arbitrarily arrived at or based upon a clear abuse of discretion and without any evidence to support its decision, would vest those members of the board who happened to have control of the political machinery, with power to disfranchise candidates of an opposing
173 party who might conceivably be the choice of a majority of the electorate and thus perpetuate the members of the controlling political power in office. This presents a challenge to justice. Our democratic institutions are based on free elections, and our laws and traditions recognize the rights of persons who are qualified and who comply with statutory provisions to present themselves for public office. It certainly could not have been the intention of the legislature to defeat these inviolate rights by vesting the electoral board with a final decision where it clearly appears that its ruling is arbitrary or predicated upon an abuse of power or even fraudulent. In the case at bar the mandamus judgment in the circuit court specifically found that White was not the village clerk, thereby disqualifying him from membership on the electoral board, and consequently that the board was not legally constituted to pass on the objections to relators' nomination papers. However, assuming that the decision had been made by a legally constituted board, we are still of the opinion that the superior court had jurisdiction to review by mandamus the action of a board which was so clearly an abuse of power and so arbitrary as to amount to fraud." • • • "The plain facts of this case clearly indicate that instead of permitting the names

BLEED THROUGH

of all candidates duly nominated to appear on the ballot so that the voters could decide who their village officers should be, the purported election board, which was held by the order of the circuit court and the statutory chairman of the board to be illegal, entered into an undertaking which was in the nature of a conspiracy to keep the Regular Peoples' Political Party candidates off the ballot in order to insure the election of the candidates of the Progressive Political Party with which respondents were affiliated. This was nothing short of an infamous and disgraceful scheme to steal the election. Three able and experienced jurists, Judges Graber, Fisher and Jarecki, all of whom had occasion to inquire impartially into the facts, would not countenance the brazen scheme. We think it would be an extremely dangerous doctrine, indeed, to hold that in the light of the record presented, this illegal board could hold a rump session, and without any supporting reason, disqualify duly nominated candidates of the opposing party."

174 This respondent alleges, as heretofore stated, that no federal question is involved herein, and further alleges that any constitutional question claimed by the relator has been waived by him under the law of the State of Illinois and of the United States Supreme Court. The Illinois Statute provides that constitutional questions can be reviewed only in the Illinois Supreme Court, Illinois Revised Statutes 1947, Chap. 110, Sec. 199, Par. 1. The United States Supreme Court had occasion to pass on this question in the case of Central Union Telegraph Company *vs.* Edwardsville, 269 U. S. 190. This was a civil case arising out of certain ordinances passed by the City of Edwardsville, but this respondent alleges that this case is a civil case having no criminal aspect whatever; and respondent further alleges that every Habeas Corpus proceedings is a civil case.

The United States Supreme Court in construing the Statute referred to above, said in its opinion, 269 U. S. 190 at Page 193-194: This case went up from Illinois:

"The construction of this statute has been uniformly held to be that where a question involves the Constitution, it must be taken on error or appeal to the supreme court, and that if it be taken to the appellate court on

POOR COPY

other grounds, the party taking the appeal or suing out the writ of error shall be held to have waived the constitutional questions. Indiana Millers' Mut. F. Ins. Co. *vs.* People, 170 Ill. 474; Robson *vs.* Doyle, 191 Ill. 566; Case *vs.* Sulligan, 222 Ill. 56; Poe *vs.* Ulrey, 233 Ill. 56; R. Haas Elec. & Mfg. Co. *vs.* Springfield Amusement Pk. Co., 237 Ill. 452; Scott *vs.* Artman, 237 Ill. 394; Vermilion Special Drainage Dist. *vs.* Schockey, 238, Ill. 237. The City, therefore, moves to dismiss the writ of error. It is objected on behalf of the plaintiff
175 in error that the words 'validity of a statute or construction of the constitution' refer to the Constitution of Illinois and not to the Federal Constitution. The supreme court of Illinois has held otherwise in this case. 309 Ill. 482-484, 141 N. E. 206." * * * "It seems to us that the practice under the statute of Illinois above quoted is entirely fair. If the litigant has a constitutional question, Federal or state, he may take the case directly to the supreme court and have that question decided, together with all the other questions in the case, and then if the Federal constitutional question is decided against him, he may bring it here by writ of error or application for certiorari. If he elects to take his case to the appellate court, he may have the nonconstitutional questions considered and decided, but he gives up the right to raise constitutional objections in any other court. There is some complaint that counsel could not infer that the constitutional questions referred to in the statute were federal questions, because the supreme court of Illinois had not so decided before this case. We have not been able to determine from the Illinois decisions cited above whether any of the constitutional questions held to be waived therein were Federal until the present case. It is not, however, a forced or strained interpretation to hold that "cases * * * in which the validity of a statute or construction of the Constitution is involved" include validity under, or construction of, both Constitutions. When so declared, by the state court it should bind us unless so unfair or unreasonable in its application to those asserting a Federal right as to obstruct it."* * * "Here the law of the State under the statute, as many times construed, required the appeal on the constitutional

BLEED THROUGH

grounds to be taken directly from the circuit court to the supreme court of Illinois. It elected, instead, to go to the appellate court with the consequences well understood, and thereby it waived the question which it now wishes to present here. The motion to dismiss the writ of error is granted."

This respondent having fully answered and by this return has shown the court that if relator did have any right under the constitution, it was waived; and respondent alleges that it appears from the pleadings herein that no federal question is involved herein, and it also appears from the pleadings herein that the relator has failed to
176 exhaust his remedies in the State Courts.

Wherefore, this respondent prays that the writ of Habeas Corpus heretofore issued herein be quashed and that the relator be remanded to the custody of this respondent.

Elmer Michael Walsh,
*Sheriff of Cook County, Illinois*
By William J. Tuohy,
*State's Attorney of Cook County, Illinois*
By James V. Cunningham,
*Assistant State's Attorneys.*

Form 85
177

## CONTEMPT MITTIMUS

(Seal)

People of the State of Illinois
ex rel, Lyman F. Martin, et al
plaintiffs

vs.

Ralph E. White, et al
defendants.

45 S 6174

State of Illinois, } ss.
County of Cook. }

The People of the State of Illinois,
To the Sheriff of Cook County, Greeting:

Whereas, On the 1st day of June, A. D. 1945, by a certain Order made in the Superior Court of Cook County, State of

POOR COPY

Illinois, by the Hon. Joseph A. Graber, one of the Judges of said Court in a certain cause lately pending in said Court on the Law side thereof, wherein People ex rel Lyman F. Martin, et al are plaintiffs and Ralph E. White, is defendant, it was Ordered that Ralph E. White be committed to the County Jail of Cook County, Illinois, for a period of six (6) months, there to remain, charged with the contempt, mentioned in such Order, or until released by due process of law, and that a warrant for that purpose issue.

Now We Command You, That you take the body of the said Ralph E. White and him closely and safely keep in your custody in the County Jail of Cook County for a period of six (6) months, or until released by due process of law; and you are to return this Writ forthwith to this Court with an endorsement thereon showing in what manner you shall have executed the same.

Witness: Henry Sonnenschein, Clerk of said Court, and the Seal thereof, at Chicago, in said County, this 10th day of July, 1947.

Henry Sonnenschein,
*Clerk.*

178 45 S 6174 0634

People of the State
of Illinois, ex rel,
Lyman F. Martin, et al

vs.

Ralph E. White, et al.
(80106)

Sheriffs Fees
Service $200
Mileage 50
Return 50
Total 300 Fees

Irving W. Eisenman
160 N. La Salle
Central 0550

Released to custody of his atty, Joseph I. Bulger until Friday July 25 by order of Judge Wm. V. Brothers. 7-24-47
Remanded to the custody of Sheriff.

Received
1947 Jul 11 PM 3 00

BLEED THROUGH

Elmer Michael Walsh
Sheriff
May 14, 1948
James V. Wyland
# 42

179 And afterwards on, to wit, the 14th day of January, 1948 there was filed in the Clerk's office of said Court a certain Writ of Habeas Corpus With Marshal's Return Endorsed Thereon in words and figures following, to wit:

180 Habeas Corpus D. C. Form 10

UNITED STATES DISTRICT COURT

Eastern Division, Northern District of Illinois

---

The President of the United States of America

To Elmer Michael Walsh, Sheriff of Cook County, Illinois, —Greeting:

You Are Hereby Commanded, that the body of Ralph E. White, by you restrained of his liberty, as it is said detained by whatsoever names the said Ralph E. White, may be detained, together with the day and cause of his being taken and detained, you have before the Honorable Michael L. Igoe, Judge of the United States District Court in and for the Northern District of Illinois, at the court room of said Court, in the City of Chicago at 10 o'clock a. m., on the 30th day of December, 1947, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Michael L. Igoe
United States District Judge at Chicago, Illinois
this 29th day of December, A. D. 1947,

(Seal) Roy H. Johnson
*Clerk.*

By Gizella Butcher
*Deputy Clerk.*

181 Nor. Dist. of Ill.
U. S. Marshals Return

Served this writ on the within named Elmer Michael Walsh, Sheriff of Cook County, Illinois, by leaving a copy

POOR COPY

thereof for him at Criminal Court Building, 26th and California Ave., Chicago, Ill., with Joseph Burke, Deputy, who accepted service for him this 29th day of December, A. D. 1947.

T. P. O'Donovan, U. S. Marshal, by Lawrence R. Alexander, Deputy.

1 Ser 200
7 m 42
242

No. 47 C 1832

UNITED STATES DISTRICT COURT
Northern District of Illinois

Ralph E. White
*vs.*
Elmer Michael Walsh, Sheriff
of Cook County, Ill.
HABEAS CORPUS
Returnable Dec. 30, 1947
at 10 a. m.

(Seal)

Ode L. Rankin, Joseph I. Bulger
139 N. Clark St. *Attorney for the Relator.*
Sta. 4426-4427

.....District of ....., ss:

Received the within writ the .... day of ....., 19...., and executed same.

.....
*U. S. Marshal.*

By.....
*Deputy Marshal.*

182 And, to wit, on the 26th day of January, 1948, being one of the days of the regular December, 1947 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

BLEED THROUGH

183 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—47 C 1832) • •

This cause this day coming on for hearing on the Petition herein for a Writ of Habeas Corpus and the Answer thereto come the parties to this suit by their attorneys, respectively, comes also the respondent and brings the relator into open Court and said hearing proceeds, the evidence introduced and testimony heard on behalf of the relator are concluded, the respondent offers no evidence or testimony and during the closing arguments of counsel the hour of adjournment having arrived it is

Ordered that this cause be and it is hereby continued for further hearing to January 27, 1948.

184 And afterwards, to wit, on the 27th day of January, 1948, being one of the days of the regular December, 1947 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

185 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—47 C 1832) • •

This being the day to which this cause was continued for further hearing again come the parties by their attorneys, comes also the respondent and brings the relator into open Court and the hearing proceeds and the Court having now heard the evidence adduced for the parties and the arguments of counsel disposition herein is hereby taken under advisement and it is

Ordered that the relator be and is hereby given twenty (20) days from this date within which to file brief, and that the respondent be and is hereby given twenty (20) days thereafter within which to file answering brief and it is

Further Ordered that this cause be and it is hereby continued to April 29, 1948, for disposition.

186 And afterwards on, to wit, the 1st day of June, 1948 there was filed in the Clerk's office of said Court a certain Transcript of Proceedings Had on January 25, 1948 in words and figures following, to wit:

POOR COPY

187 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—47-C-1832) • •

188 INDEX


| | Dir. | Cr. | Re-Dir. | Re-Cr. |
|---|---|---|---|---|
| Ralph E. White | 15 | 22 | | |
| Louis Hoffman | 24 | | | |
| Paul W. Brust | 27 | | | |
| Oliver H. Felton | 37 | | | |
| Karl F. Schimmelphennig | 40 | | | |


EXHIBITS


| Relator's Ex. No. | Page |
|---|---|
| 1 | 5 |
| 2-3-4-5-6-7 | 8 |
| 9 | 13 |
| 9-A | 13 |
| 9-B | 13 |


189 IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—47-C-1832) • •

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause taken before the Honorable MICHAEL L. IGOE, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on Monday, January 25, 1948, at 10:00 o'clock A M.

APPEARANCES:

MR. ODE RANKIN and
MR. JOSEPH I. BULGER,
*Attorneys for Petitioner;*
MR. WILLIAM J. TUOHY,
*State's Attorney of Cook County,*
By MR. JAMES V. CUNNINGHAM and
MR. JOHN T. GALLAGHER,
*Attorney for Respondent.*

—:—

BLEED THROUGH

190 Mr. Rankin: If the Court please, Mr. Bulger had a conference with the State's Attorney with reference to the exhibits which show the record in this case, for the purpose of facilitating the trial, and they have reached some conclusions. I understand from Mr. Bulger that no objection will be made to the authenticity of these documents, or their correctness; the only objection to be preserved by the State will be as to competency, materiality, and relevancy of the documents. Is that right?

Mr. Cunningham: That is right, yes.

Mr. Rankin: Now, before introducing the documents in evidence, I want to make just a little statement, if the Court please.

Of course, this case is to be tried upon the record. The record will either show jurisdiction, or it will not, and I want to offer a little testimony on background for the purpose of showing the good faith of Mr. White. That question was raised, but so for as he is concerned, being the valid clerk, there was not anything on his part other than doing his duty as a public official.

I also want the Court to understand a point of law which I will make; that is, understand my viewpoint
191 on it, on the question of jurisdiction. I think the Court asked me at the last hearing just what point I was relying on on the question of jurisdiction, and I think I at that time stated it was the entire proceedings, and not any particular thing.

I have studied that matter closely since the last hearing, and the viewpoint of jurisdiction in a case of this kind is that wherever there is some particular fact upon which jurisiction depends, then the Court is right in deciding that fact, and the decision of that fact, where it is raised between the parties becomes *res adjudicata* between the parties. First, the Constitution provides that one jurisdiction of the three shall not overlap the other, which is to say, Judicial Departments will not invade the Executive or Legislative and do things which the law and the Constitution fixes upon those different departments of government, and the legislature having made the action of the Board final, so that it cannot be refuted, then, if the Judicial Department steps across the line and begins to fix the duties—in other words, it will appear from the face of this record that a jurisdiction is taken away by the law from the Cir-

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cuit Court or the Superior Court; in fact, the Constitution and the law makes it prohibitive, and what the court
192 did in this case is prohibited by the Constitution and the statute.

That is the groundwork of the case and the point of jurisdiction which will appear here as I understand it, your Honor.

First, as Relator's Exhibit No. 1, I wish to introduce in evidence, an abstract of the record in this case which was made and filed in the Appellate Court, together with a transcript of the proceedings in the Appellate Court of Illinois, which shows the opinion of the Court, and all of the other proceedings that they had in the Appellate Court. This document, this particular one, was prepared for use upon petitioner for a certiorari to the United States Supreme Court, and shows the complete case, shows the basis of the trial in the Appellate Court.

Mr. Cunningham: Are you through with that now, Mr. Rankin?

Mr. Rankin: Yes.

Mr. Cunningham: Of course, we are objecting to it as being immaterial. We can't see why you should burden this Court with this very voluminous book on the question of whether Judge Graber had jurisdiction to sentence this man for contempt.

193 We object to it.

The Court: It may be admitted.

(Said document, so offered and received in evidence, was thereupon marked as Relator's Exhibit No. 1.)

194 Mr. Cunningham. Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

Mr. Rankin: As Relator's Exhibits 2, 3, 4, 5, 6, and 7, I wish to offer in evidence these documents showing the proceedings which were had in the Circuit Court upon the filing of the petition for mandamus in the Circuit Court, against Judge Jarecki, to return the documents to the Clerk of the Village of Lyons.

Now, Exhibit 2—

The Court: That is the first mandamus suit?

Mr. Rankin: That is the first mandamus suit.

It seems that a stenographic report was kept of each of these matters, and we have obtained them, and the

BLEED THROUGH

first one shows application to Judge Fisher, and then it went back to Judge Jarecki, and what happened there, and then the proceedings back before Judge Fisher again, until finally the matter was disposed of upon a rule to show cause, and then the rule to show cause was disposed of on order to Judge Jarecki, an order by Judge Fisher against Judge Jarecki. Judge Jarecki refused to participate, then the rule to show cause was made against two men, and
195 immediately transferred, upon judgment of Judge Fisher in discharging them from the rule.

Those are the documents.

Mr. Cunningham: We object to them as improper, as being immaterial, not being the best evidence. We have no opportunity to cross-examine anybody on them, and not tending to have anything to do with Judge Graber's jurisdiction.

The Court: You don't object because these records are not authentic?

Mr. Cunningham: I am willing to agree they are what they purport to be; in other words, I wouldn't force them to prove them true.

The Court: All right.

Mr. Cunningham: As I told counsel, as far as having the stenographer come in here, and all of that detail, I wouldn't insist upon that; I would waive that.

The Court: Then, your objection goes mainly to the point that they are immaterial, and not to the form, what they are?

Mr. Cunningham: That is right. We have no opportunity to cross-examine anybody on them.

The Court: That is the way to introduce that kind of evidence, isn't it?

196 Mr. Cunningham: He is trying to prove that a certain fact that took place here was wrong.

The Court: He is not arguing that that is the proper way to introduce that kind of evidence, from his standpoint; he is introducing some records.

Mr. Cunningham: I suppose that is the proper way to offer those documents.

The Court: That is what I mean.

Mr. Cunningham: Our position is that the documents have no business in this case. That is our position.

The Court: They may be admitted.

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(Said documents so offered and received in evidence, were thereupon marked as Relator's Exhibits 2, 3, 4, 5, 6, and 7.)

197 Mr. Cunningham. Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

Mr. Rankin: For the purpose of showing your Honor that there was a census taken in the Village of Lyons, after the census of 1940 and before the hearing before Judge Jarecki, before these objections were filed, the Village election came on.

I offer in evidence here—I might say this was done under the rules and regulations of the Civilian Defense organization, and under the jurisdiction of its offices, a census was made and returned to the municipality, and it passed an ordinance, based upon it.

I offer in evidence as Relator's Exhibit 8, a package of census takers' notes supporting the Village ordnance establishing the census.

I offer in evidence as Relator's Exhibit 9, a letter from the training officer, Mr. Janda, to Mr. Bulat, who was President of the Village, and as part of Exhibit 9, a certified copy of the result of the Village Board of the Village of Lyons, establishing the population of the Village as 5,424 persons, residing in the Village on that date,

198 which was August, 1942.

I offer as Relator's Exhibit 9-A, a certified copy of the blackout ordnance of the Village of Lyons.

I might say that I want to offer in evidence as Relator's Exhibit 8, which was previously mentioned, collectively, this bunch of documents, being the working documents of the persons who made that census, for the purpose of verification, so that it can be checked if there is any question about the validity of it.

Mr. Cunningham has copies of every exhibit. These are the originals.

Mr. Cunningham: I haven't any copies of these.

Mr. Rankin: Yes, you have.

Mr. Cunningham: We are objecting to them, your Honor.

I want to call your Honor's attention to this fact in regard to this census point.

At the very first meeting of the Election Board, the question of the census came up, and that is the only time it

BLEED THROUGH

did come up, and the decision of the Board was posted as to what the census of the Village was at that time.

Now, these documents here purport to show that
199 the census at that time was something different than what the evidence showed at that time it was.

The Court: What evidence?

Mr. Cunningham: All of the evidence that was had at that hearing as to what the census was. That is the only evidence they had before the Board as to what the census was, and that was to the effect that it was under 5,000. They didn't have this evidence at that time. They didn't produce that evidence. They didn't offer that evidence, and they have never done it all along the line until now.

The Court: So I understand. I read as much of the record as I could relative to that. As I remember, the census was under 5,000 population, and I think Judge Jarecki said he was going to be bound by the official census. At that time, I think there were two members of the Village Board. I take it, as a matter of law, they are presumed to know what the records of the Village show relative to population.

Mr. Rankin: That is the situation, your Honor.

The Court: They knew what the population was. The only evidence I see in this record, somebody informally stated what the official census was, and then Judge Jarecki said he was going to be bound by it.

200 Mr. Cunningham: Whatever evidence there was before that Board, there was a hearing there, and the parties had an opportunity to present evidence as to what the evidence was, and the only statement or evidence that was given there was the last census that had been taken. They said it was the last one, and it was apparently accepted as such. Whether they didn't know about this, overlooked this, or didn't have it there at the time, nevertheless, they didn't have it there at the time. That was not introduced at that hearing. That was the only finding the Board could make, from what was said and introduced and produced at that hearing was that the census was under 5,000.

Now, they come along with this and say that they took this late census, and this and that.

Now, we feel that this Court ought not to go way back to that election to see if that is what the census was.

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The Court: Doesn't Judge Friend refer to that in his opinion?

Mr. Cunningham: Yes. They went into that thoroughly. They decided that the census was under 5,000.

The Court: The only thing I find in this record is that somebody stated informally that the official census
201 was under 5,000.

Mr. Cunningham: That is the record at that time, that it was under 5,000.

The Court: We are not going into that. The only question here is the admissibility of these documents.

Mr. Cunningham: They want to show by these documents that this census at that time was not right.

The Court: They are going to argue that later on.

Mr. Cunningham: Yes.

The Court: What they are doing now is putting in the record.

Relator's Exhibits 9, 9-A, and 9-B, will be admitted.

You object, of course?

Mr. Cunningham: Oh, yes, I object to them as immaterial and improper.

(Said documents, so offered and received in evidence, were thereupon marked as Relator's Exhibits 9, 9-A, and 9-B.)

202 Mr. Cunningham: I just want to make my record.

There is no Federal question raised by these questions. They have now discovered evidence in connection with the hearing of that original petition of the Election Board of the Village of Lyons which occurred in April, prior to the election involved, and that does not contain, in any way, or have any bearing on the jurisdiction of Judge Graber on entering the contempt order.

I object for those reasons, your Honor.

The Court: Yes. The objection is overruled. They may be admitted.

Mr. Cunningham: Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

203 White—direct

RALPH E. WHITE, called as a witness in behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

BLEED THROUGH

*Direct Examination.*

By Mr. Rankin:

Q. Please state your name.

A. Ralph E. White.

Mr. Rankin: Speak up, now, so we can all hear you.

By Mr. Rankin:

Q. Your address?

A. 4130 Maple Avenue, Lyons, Illinois.

Q. How old are you?

A. Forty-five.

Q. How long have you lived in the Village of Lyons?

A. Fifteen years.

Q. What is your business?

A. I work for the Federal government, Veterans' administration.

Q. How long have you worked for them?

A. Two years.

Q. Before that time, what was your business?

A. Worked for the Army Engineers.

204 Q. Where at?

A. Chicago area.

Q. Did you hold any official position with the Village of Lyons?

A. Yes, sir.

Q. What was that position?

A. Village Clerk.

Q. When were you elected?

A. April, 1941.

Q. You qualified for that position?

A. Yes, sir.

Q. How long were you in office?

A. Four years.

Q. Until 1945?

A. That is right, sir.

Q. How long did you work for that concern while you were Village Clerk?

A. About three years.

Q. What were your duties there, in a general way?

A. I was an Army inspector.

Q. Do you have any war service?

A. Yes, sir.

Q. What was it?

A. I was in the first world war.

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205 Q. In what?
A. The first world war.
Q. First world war?
A. Yes, sir.
Q. Were you in the second war, world war?
A. No, sir.
Q. What service did you have in the first world war?
A. Approximately two years.
Q. There is some question here about your serving as Chief of Police. Tell the Court what your service was, and how it came about, in just a general way.
A. Was asked to take over as acting Chief of Police. He was having a little trouble, and he asked me to take over.
Q. About when was that?
A. 1943, in July.
Q. What part of your time did you spend on that job?
A. Evenings.
Q. And what part of your time did you spend in doing the official duties for the Village, as Clerk?
A. Well, I consolidated them together in the evening.
Q. Did you have anyone working for you as assistant?
A. Yes, sir.
Q. Who was that?
206 A. Joseph Janda.
Q. How long was he under your employment as an assistant?
A. Oh, approximately two years.
Q. What did he do?
A. Well, took care of the files, books, various things.
Q. What time of the day did he devote to that work?
A. Evenings.
Q. Did you have anything to do with the taking of the census during the war?
Mr. Cunningham: I object to that as immaterial.
The Court: Objection overruled.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.
By the Witness:
A. Well, I knew about the census; I was one of the assistants on the Civilian Defense.
By Mr. Rankin:

BLEED THROUGH

Q. Did you take any part in it, was the question?
A. No, sir, I didn't take no part in it.
Q. Do you know who did?
A. Well, the Civilian Defense is the whole block,
207 and involves various departments. The Civilian Defense took the census.
Q. You knew of it at the time?
A. Yes, sir.
Q. Subsequently, an ordinance was passed by the municipality. Did you know of that ordinance—I mean, the one establishing the result of the canvass?
A. Yes, sir.
Q. This is a photostatic copy of the ordinance. Will you look at it? Is that your signature on there?
(Document shown to the witness.)
A. Yes, sir.
Q. In the spring of 1945, prior to the annual election, some ballots or tickets were filed with you, were there?
A. Yes, sir.
Q. By this organization, and some objections were filed?
A. Yes, sir.
Q. To one of those tickets?
A. Yes, sir.
Q. When you received those objections to the ticket, what did you do about it?
Mr. Cunningham: That is objected to as immate-
208 rial and improper.
The Court: He may answer.
Mr. Rankin: I want to show what his connection was and what he did.
The Court: He may answer.
By Mr. Rankin:
Q. Go ahead. Tell what you did about it.
A. When these objections was received by me, I didn't know what to do, and I consulted the Village Attorney, Mr. Bulger, and he advised what procedure to take. I wrote a letter to County Judge Jarecki, notifying him of the objections, and he, in turn, notified us of the date of hearing.
Q. Subsequent to that, you attended the hearing before Judge Jarecki upon those objections?
A. Yes, sir.
Q. Who was the other person on that Board with you?
A. Mr. Hoffman.

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Q. You were not a candidate for re-election?
A. No.
Q. The Village President was candidate for re-election?
A. Yes, sir.
Q. And you and Mr. Hoffman and the Judge sat in on those objections. Where was that had?
209 Mr. Cunningham: I object to that as immaterial.
The Court: Objection overruled.
By Mr. Rankin:
Q. Where was it?
A. That was in Judge Jarecki's court room, sir.
Q. Did you have any documents with you on that morning in the hearing of the objections before Judge Jarecki?
A. Yes, sir.
Q. What were they?
A. They were documents in connection with the population census of Lyons.
Q. What did you do with them?
A. The question come up as to population. I submitted these documents to show the population was over 5,000.
Q. Who did you submit them to?
A. Judge Jarecki, sir.
Q. Do you know what became of those documents?
A. No, sir.
Mr. Cunningham: I object to that. It is immaterial what became of those, your Honor.
Mr. Rankin: O.K. You may cross-examine.

210 *Cross-Examination.*

By Mr. Cunningham:
Q. You told us that you became Chief of Police of the Village of Lyons in July, 1943?
A. Acting Chief of Police, sir.
Q. How long did you continue in that capacity?
A. Up until now.
Q. You still are acting in that capacity?
A. Yes, sir.
Q. At the same time, you were Village Clerk up until your term expired?
A. That is right, sir.
Q. Mr. Janda was your assistant clerk?
A. He was my assistant clerk, yes, sir.

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Q. Who appointed him assistant clerk?
A. The Board, I imagine. I asked for help.
Q. The Board appointed him?
A. He was not appointed; he was just—well, I imagine he was appointed, or whatever he did. He was not officially appointed clerk, though.
Q. Did he get paid for his services?
A. Yes, he did.
Q. Who paid him?
A. The Village.
211 Q. How long did he act there as assistant clerk?
A. Approximately two years.
Q. Do you know how much money they paid him?
A. No, sir, not offhand.
Q. While you were acting as Chief of Police, from July, 1943, up until your term as Clerk expired, he did most of the work, did he?
A. Yes, sir, under my supervision.
Q. He was around the office all of the time there in the evening?
A. Whenever it was necessary.
Q. He took care of all of the official duties, did everything?
A. Yes.
Q. What are the principal duties of the Clerk of the Village of Lyons?
A. Well, it is to prepare documents for the Village Board, take minutes, file correspondence; various things.
Q. He did all of that?
A. Under my supervision, yes.
Mr. Cunningham: That is all.
Mr. Rankin: That is all, Mr. White.
(Witness excused.)
212 LOUIS HOFFMAN, called as a witness in behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

By Mr. Rankin:
Q. State your name.
A. Louis Hoffman.
Q. Your residence?
A. 4140 Ana Avenue, Lyons.
Q. What is your business?
A. I am an inspector, machinery inspector.

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Q. Have you ever had any official connection with the Village of Lyons?
A. I have.
Q. When was that?
A. I was elected Treasurer in 1939.
Q. How long did you serve?
A. I have been serving ever since.
Q. How is that?
A. I have been serving ever since 1939.
Q. You were on the municipal electoral board in 1945, were you?
213 A. Yes, sir, I have been.
Q. You sat with Mr. White and Judge Jarecki upon that Board?
A. Yes, sir, I did.
Q. Tell me, did you have anything to do with the taking of the census in the Village of Lyons?
Mr. Cunningham: I object to that as immaterial.
The Court: Objection overruled.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By the Witness:
A. We have prepared a resolution—the Village Board prepared a resolution to have the census taken.
By Mr. Rankin:
Q. And did you have anything to do with taking the census itself?
A. I did not, sir.
Q. You knew of it?
A. I knew of it.
Q. On the hearing before Judge Jarecki, were there any documents introduced there or before the Board?
214 A. Yes, sir.
Mr. Cunningham: I object to this as immaterial, your Honor.
The Court: Objection overruled.
Mr. Cunningham: Exception.
(To which rule of the Court, the defendant, by his counsel, then and there duly excepted.)
By Mr. Rankin:
Q. What were they?
A. Mr. White brought in an affidavit stating the of-

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ficial results of the census.

Q. Were you sitting on the Board at the time the resolution was passed—

A. Yes, sir.

Q. (Continuing)—fixing the census?

A. Yes.

Mr. Cunningham: We object to this as immaterial, your Honor.

The Court: Objection overruled.

Mr. Rankin: You may cross-examine.

Mr. Cunningham: No cross-examination.

(Witness excused.)

215 PAUL W. BRUST, called as a witness in behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

By Mr. Rankin:

Q. State your name, please.

A. Paul W. Brust.

Q. Your residence?

A. 1301 North 14th Avenue, Melrose Park, Illinois.

Q. What is your profession?

A. I am an attorney at law.

Q. In 1945, were you consulted by some objectors to an election ticket in the Village of Lyons?

Mr. Cunningham: That is objected to as immaterial and improper.

The Court: He may answer.

By the Witness:

A. Yes.

Mr. Cunningham: Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.

216 By Mr. Rankin:

Q. By whom?

A. Two citizens.

Q. What did you do for these objectors?

Mr. Cunningham: I object to this as immaterial, what he did for them.

The Court: He may answer.

Mr. Cunningham: Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

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By the Witness:

A. I told them that I would examine the law—that I would examine the certificate, and in the meantime, I would examine the law and would be prepared to give them an opinion.

By Mr. Rankin:

Q. And did you render an opinion to them?

A. I did.

Mr. Cunningham: We object to this, your Honor.

The Court: Overruled.

By Mr. Rankin:

Q. I show you this document, and ask you if that is the opinion which you rendered, or a copy of it?

217 (Document shown to the witness.)

A. Yes, it is.

Mr. Rankin: If the Court please, I want to introduce that in evidence.

I will tell you the purpose of it. The purpose is to show good faith of these defendants and the prosecution of them.

The Court: How is that material?

Mr. Cunningham: We object to it as immaterial, your Honor.

The Court: You concede that objections that were filed against these intervening petitions were bona fide?

Mr. Cunningham: Oh, yes.

Mr. Rankin: We will accept that, then.

Mr. Cunningham: That is the only concession we do make.

The Court: That is all the record will justify, that there were objections legitimately filed.

Mr. Cunningham: We don't deny that; we deny that it has anything to do with Judge Graber's order of contempt.

The Court: You concede that the objections were

218 filed?

Mr. Cunningham: Yes.

The Court: All right.

By Mr. Rankin:

Q. Mr. Brust, did you read over these objections before the municipal Board trial before Judge Jarecki and the other two men?

Mr. Cunningham: I object to that as immaterial, your Honor.

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The Court: Objection overruled.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By the Witness:
A. Yes. I appeared before Judge Jarecki, I believe, on the morning of March 21st or March 22nd, 1945.
By Mr. Rankin:
Q. In fact it was March 23rd?
A. March 23rd, I believe it was.
I called up that morning, and I think I talked with Judge Jarecki's Clerk, and he told me that the Judge was on the Bench, hearing his motions of course, that at 10:30, after he got through with his motions he would sit as Chairman of the Electoral Board, not only in our
219 case but that he had five or six similar cases that morning.
I was to be there at 10:30. I came over at twenty minutes after 10:00, and the hearing was all over. At 10:30 there was no hearing, nothing said about a hearing. I was not at the hearing.
Mr. Cunningham: If the Court please, I ask that that statement all be stricken out.
The Court: It will be stricken. That statement is immaterial. He was not at the hearing.
The Witness: It was all over when I got there.
The Court: Well, you were not there.
Mr. Rankin: The purpose of it is to show the Court that one of the men wanted to hear the objections, hear the objectors, and Mr. Brust had been informed that the hearing would be at 10:30. It is for the purpose of explaining why they were not there.
The Court: For that purpose, the testimony may stand. The further statement, I think, is not material.
He was told to be there at 10:30 and he got there at 10:20 and the hearing was all over?
The Witness: Correct.
Mr. Cunningham: If your Honor please, I would like a ruling on my motion to strike all of the testimony.
220 The Court: Your motion will be allowed, so far as that part—where he stated there was no hearing will be allowed; the rest is overruled.
Mr. Cunningham: Exception.

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(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By Mr. Rankin:
Q. Did you appear before Judge Jarecki subsequently on that date, which is fixed as March 27th?
Mr. Cunningham: I will object to that as immaterial and improper, your Honor.
By Mr. Rankin:
Q. Did you appear there?
The Court: He may answer.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By the Witness:
A. Yes, I did.
By Mr. Rankin:
Q. Who was there?
Mr. Cunningham: We object to that, your Honor.
221 The Court: The same ruling.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By the Witness:
A. At that time, Mr. Bulger was there, Judge Jarecki, Mr. Lexa, Mr. Urban Lavery, the objectors, and the entire Electoral Board and, I think, some citizens from both political parties of the Village of Lyons.
By Mr. Rankin:
Q. At the conclusion of that conference in Judge Jarecki's chambers, was there anything said there about going some other place to have a hearing?
Mr. Cunningham: We object to that as immaterial and improper.
The Court: He may answer.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By Mr. Rankin:
Q. Was there anything said about it?
A. Yes, there was.
222 Q. Who said it, and what was said?
A. Judge Jarecki. Judge Jarecki said—
Mr. Cunningham: We object to what was said, if the Court please.

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The Court: Same ruling.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
The Witness: I may answer?
The Court: Yes.
By the Witness:
A. Judge Jarecki said he had been served a writ of mandamus, and he stated that the Electoral Board as constituted on March 22nd or 23rd, was illegal, an illegal board, and he would take no further part in the proceedings.
By Mr. Rankin:
Q. When you left there, was anything said by anyone with reference to where the men were going and what they were going to do?
Mr. Cunningham: We object to that as immaterial and improper, your Honor.
The Court: Objection overruled.
223 Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By the Witness:
A. Mr. Bulger asked if he could use their chambers or court room for the purpose of hearing any evidence on the objections. Judge Jarecki said no, and the remaining members of the Electoral Board went to the Cook County Clerk's office, on the second floor, and there Mr. Bulger made his record.
By Mr. Rankin:
Q. Was anything said by the attorney for the party with reference to going where you were going?
Mr. Cunningham: We object to that.
By Mr. Rankin:
Q. Was anything said about that?
Mr. Cunningham: We object to that, your Honor.
The Court: Objection overruled.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
By the Witness:
224 A. As attorney for the candidate, we would need accommodations.

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Q. Who said that?
Mr. Cunningham: I object to that.
By the Witness:
A. I forget who it was.
The Court: Overruled.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.
Mr. Rankin: You may cross-examine.
Mr. Cunningham: No cross-examination.
(Witness excused.)
The Court: How many witnesses have you?
Mr. Rankin: Just one or two more.
The Court: Swear them all.
(Two witnesses sworn.)

225 OLIVER H. FELTON, called as a witness in behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

By Mr. Rankin:
Q. State your name, please.
A. Oliver H. Felton, F-e-l-t-o-n.
Q. Where do you reside, Mr. Felton?
A. 4221 Joliet Avenue, Lyons.
Q. What is your business?
A. Chemist.
Q. How is that?
A. Chemist.
Q. In 1945, spring of 1945, what was your business?
A. I think that was mainly chemistry, although I also did some publishing.
Q. Newspaper?
A. Newspaper.
Q. You were one of the objectors to the ticket there, were you not, the ticket in question here?
A. Correct.

Mr. Cunningham: We object to that as immaterial,
226 your Honor.
The Court: He may answer.
By the Witness:
A. Correct.
Mr. Cunningham: Exception.

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(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

By Mr. Rankin:

Q. Who did you see? Did you talk to anyone about these objections?

Mr. Cunningham: We object to that.

The Court: He may answer.

Mr. Cunningham: Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

By the Witness:

A. Prior to the hearing or afterward?

Mr. Rankin: A little louder, please.

The Witness: Do you mean did I see anybody before objecting?

Mr. Rankin: Yes, before.

By Mr. Rankin:

227 Q. We want to know what was done about it, who you saw, who prepared your objections for you. Go ahead and tell the Court.

Mr. Cunningham: To which we object, as being improper and immaterial.

The Court: He may answer. I take it he is going to prove that he consulted this attorney.

Mr. Rankin: That is right.

By the Witness:

A. That is correct. Mr. Schimmelphennig and I got together and got hold of Mr. Brust, and he advised us on the whole matter.

By Mr. Rankin:

Q. Did you have anything to do with the taking of the census out there?

A. I did not.

Mr. Cunningham: I object to that, if the Court please.

Mr. Rankin: He says he didn't.

By Mr. Rankin:

Q. Did you know there was a census taken?

A. I did.

Mr. Cunningham: We object to that.

The Court: Overruled.

228 Mr. Cunningham: Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

By Mr. Rankin:

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Q. Did you know it at that time?
The Witness: I beg your pardon?
By Mr. Rankin:
Q. You knew at that time that a census was taken?
A. Correct.
Mr. Rankin: You may cross-examine.
Mr. Cunningham: No cross-examination.
The Court: All right. Call your next witness.
(Witness excused.)

KARL F. SCHIMMELPHENNIG, called as a witness in behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination.*

By Mr. Rankin:
Q. State your name, please.
A. Karl F. Schimmelphennig.
Q. Where do you reside?
229 A. 7946 Ogden Avenue, Lyons, Illinois.
Q. What is your business?
A. I am an engineer.
Q. Did you have anything to do with the taking of the census of the Village of Lyons in the spring of 1945?
A. No, sir, I did not.
Mr. Cunningham: That is objected to.
Mr. Rankin: He says he didn't.
By Mr. Rankin:
Q. You are one of the objectors mentioned here in this case?
A. Yes, sir.
Q. Did you see anyone about taking these objections? If you did, state who it was, and what you did.
Mr. Cunningham: We object to that, if the Court please.
The Court: He may answer.
Mr. Cunningham: Exception.
(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)
230 By the Witness:
A. Well, I had been with the opposition party, the so-called "People's Party" for twenty years. In all of those twenty years, the elections seemed to be getting worse and worse. I looked up the petition and I noticed a mistake in filing the petition, and I got in touch with

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Mr. Brust and Mr. Felton, and he told us just what to do. We filed objections to the petition as it was filed.

Mr. Cunningham: We move that the entire answer be stricken as immaterial.

The Court: It may stand for what it is worth.

Mr. Rankin: I asked you about the census.

By Mr. Rankin:

Q. Did you know that there had been a census taken?

Mr. Cunningham: We object to that, your Honor, as immaterial.

The Court: He may answer:

Mr. Cunningham: Exception.

(To which ruling of the Court, the defendant, by his counsel, then and there duly excepted.)

By the Witness:

A. Yes, I did.

231 Mr. Rankin: That is all.

Mr. Cunningham: No cross.

(Witness excused.)

The Court: Is that all of the testimony?

Mr. Rankin: Yes.

The Court: The rest will be just argument?

Mr. Rankin: Yes. I am ready for argument.

(Argument omitted.)

(Which was all of the evidence offered or received or proceedings had on the hearing of the above-entitled cause.)

## CERTIFICATE.

I hereby certify that the above and foregoing is a full, true and accurate transcript of the original shorthand notes taken upon the hearing of the above-entitled case.

THOMAS M. RYAN,
*Official Court Reporter,*
U. S. District Court,
Northern District of Illinois.

May 21, 1948.

232 RELATOR'S EXHIBIT 1 (Abstract of Records) Cover page.

234 INDEX to Supreme Court of Illinois Abstract of Record.

235 INDEX to Abstract of Appellate Court Record.

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

OCTOBER TERM, A. D. 1945

| | |
|---|---|
| The People of the State of Illinois, ex rel, Lyman F. Martin, et al., Plaintiffs, vs. Ralph E. White and Joseph F. Janda, Defendants. | Appeal from Superior Court, Cook County. — Honorable Joseph A. Graber, Judge Presiding. |

## ABSTRACT OF RECORD
## (CASE NO. 43493)

236 Placita showing organization of Superior Court of Cook County, April 2, 1945, present Hon. Joseph A. Graber, Judge, William J. Tuohy, State's Attorney, Michael F. Mulcahy, Sheriff. Henry Sonnenschein, Clerk.

Appearance of defendants, Ralph E. White and Joseph F. Janda by Joseph I. Bulger, their attorney.

Order entered April 10, 1945, sets petition for hearing and disposition on Thursday, April 12, 1945, without further notice at 10:30 A. M.; that defendants file their appearance and be prepared to proceed with said hear-
237 ing on April 12, 1945, at 10:30 A. M.; that the certificate of nomination for candidates filed by the regular peoples party and the six statements of candidacy attached thereto be impounded until disposition by the cause.

Order entered April 12, 1945, as follows:

This cause coming on now to be heard upon defendants' motion for a change of venue and the Court having read said petition and being fully advised in the premises, and it appearing from the face of said petition that the same is defective and not under oath with no jurat thereon, and for said reasons said petition is defective.

It is therefore ordered that defendants' motion for a change of venue be and the same is hereby denied.

Order requested by defendants to be entered upon their petition for change of venue:

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This cause coming on now to be heard upon defendants' motion for a change of venue, and the Court having read said petition and being fully advised in the premises, and it appearing from the face of said petition that the same is defective and not under oath with no jurat thereon, and for said reasons said petition is defective, and the Court having denied the defendants' leave to amend said petition on its face:

It is therefore ordered that defendants' motion for a change of venue be and the same is hereby denied.

Which proposed order was endorsed "Denied Joseph A. Graber," and filed April 12, 1945.

238 Order entered April 13, 1945, denying defendants' motion to dismiss complaint and giving defendants leave to file their answers instanter.

Summons issued April 5 and returned served on April 6, 1945, personally on defendants.

Complaint for mandamus filed April 5, 1945, recites:

The People of the State of Illinois, ex rel. Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera,

*Plaintiffs,*

*vs.*

Ralph E. White and Joseph F. Janda, in the capacities hereinafter designated and described,

*Defendants.*

PETITION FOR MANDAMUS.

Come now the above named petitioners and relators, by Urban A. Lavery and Frank J. Lexa, their attorneys, and respectfully show unto the Court as follows:

I. Your petitioners and relators now are and for several years last past have been residents of the Village of Lyons in the County of Cook and State of Illinois, and citizens of the State of Illinois and of the United States, and have been during all that time, and at the time of filing this petition are duly qualified and registered electors in the said Village of Lyons and in the County of Cook and in the State of Illinois.

II. Petitioners and relators show that heretofore, and within the time provided by law, they and each of

239 them have duly filed with the Clerk of the said Village of Lyons their Certificates of Nomination or nomina-

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tion papers for the offices of President of the Village Board, by Lyman F. Martin; Village Clerk, by Cecil Grgurich; Village Trustees, by Joseph Cerny, Henry J. Metz, John F. Gazarek; and Police Magistrate, by Frank J. Kucera, under the party or ticket of "Regular Peoples Party." And your petitioners and relators further show that such Certificates of Nomination or nomination papers were duly filed in accordance with the Statutes of the State of Illinois applicable thereto, namely, Sections 10-1 and 10-5 of Chapter 46 of the Revised Statutes of the State of Illinois.

III. Petitioners and relators show that they bring this Petition for Mandamus to enforce their rights to have the said Certificates of Nomination or nomination papers duly respected by the election authorities of the said Village of Lyons and to have their names printed on the ballots to be used in the Village election to be held in the said Village of Lyons on to-wit, the 17th day of April, 1945, under the party label or ticket of "Regular Peoples Party," as required by law.

IV. Petitioners and relators respectfully show that heretofore the defendant, Ralph E. White, pretending to act as Village Clerk of the Village of Lyons on or about the 17th day of March, 1945, wrote and signed a certain purported letter addressed to "Honorable Edmund K. Jarecki, County Judge, Cook County, Illinois," a photostatic copy of the said purposed letter being attached hereto as Exhibit "A" and made a part hereof; that as stated
240 in the said purported letter the defendant, Ralph E. White, acting as Village Clerk of the Village of Lyons, forwarded and enclosed and mailed to the said Edmund K. Jarecki, the original nominating petitions or nomination papers theretofore filed by the petitioners and relators with the Village Clerk of the said Village of Lyons as hereinabove alleged; and also enclosed and forwarded certain other documents and papers as mentioned in the said purported letter.

V. Thereafter and on to-wit, March 22nd, 1945, the petitioners and relators filed their certain mandamus petition in the Circuit Court of Cook County, Illinois, General No. 45 C 2198, directed against "The Honorable Edmund K. Jarecki as hereinafter designated and described"; that in and by the said mandamus petition it was alleged and contended that the "Municipal Officers Electoral Board" men-

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tioned and described in the purported letter of the defendant, Ralph E. White, as Village Clerk of the Village of Lyons, dated March 17th, 1945, was illegal and invalid and without any authority of law to pass upon any objections to the Certificates of Nomination or nominating papers of the petitioners and relators; that thereafter service of process in the said mandamus suit was had on the defendant, Edmund K. Jarecki, purporting to act as Chairman of the said purported Municipal Officers Electoral Board; that thereafter the State's Attorney of Cook County, the Honorable William J. Tuohy, duly entered his appearance as attorney for the said defendant; that thereafter by direction of the said Circuit Court and by consent of counsel for all parties to the said mandamus suit, the said
241 mandamus suit duly came on for hearing before the said Circuit Court on to-wit, March 26th, 1945; that thereupon after such hearing, and after argument of counsel for petitioners and the defendant, the said Circuit Court of Cook County duly entered its judgment in mandamus, a true and correct copy of the said judgment in mandamus being attached to this petition as Exhibit "B" and made a part hereof.

VI. That thereafter and on to-wit, March 26th, 1945, the said Edmund K. Jarecki, acting as Chairman of the said purported Electoral Board was duly served with a certified copy of the said judgment in Mandamus; that thereafter and forthwith and upon the same day the said Edmund K. Jarecki, as Chairman of the said purported Electoral Board duly complied with the said judgment in mandamus in all particulars and in the following respects:

(a) The said Edmund K. Jarecki then and there entered a finding in the proceedings of the said Board to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law and that the said Electoral Board should therefore be dissolved.

(b) The said Edmund K. Jarecki then and there duly ordered and directed the said purported Municipal Officers Electoral Board to be dissolved.

(c) The said Edmund K. Jarecki then and there by United States registered mail returned all Certificates of Nomination or nomination papers, including the Certificates of Nomination papers of the petitioners and relators back to the Village authori-

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ties of the Village of Lyons and that he, the said Edmund K. Jarecki, then and there wrote a letter
242 accompanying the said papers together with a certified copy of the said judgment in mandamus, the said papers being returned to and the said letter being directed to the Village authorities all as shown by a true and correct copy of the said letter marked "Exhibit C" and made a part hereof.

And your petitioners and relators show and charge that the said letter from the said Edmund K. Jarecki, together with all the documents hereinabove mentioned and described in this paragraph of this petition, including specifically the Certificates of Nomination and nominating papers of petitioners and relators were duly received on or about the 27th day of March, 1945, by the defendants or either of them acting as Clerk of the Village of Lyons.

VII. Petitioners and relators show that by virtue of the premises hereinabove alleged and by virtue of the election statutes of the State of Illinois in that behalf provided, and particularly under Chapter 46, Section 16-5 of the Election Code of the State of Illinois, and all other laws of the State of Illinois concerned with the printing and furnishing of ballots by village authorities, your relators and each of them are entitled to have their names printed on the ballots to be used at the Village election to be held in the Village of Lyons on to-wit, April 17th, 1945; and by reason of the premises, particularly set forth in this paragraph of this petition, it became and was and is the duty of the defendants or either of them as Village Clerk of the said Village of Lyons (as this Court may determine) to cause the names of petitioners and relators so to be printed on the said ballots all as above alleged.

VIII. Your petitioners and relators duly show that the judgment in mandamus of the Circuit Court of Cook
243 County heretofore particularly mentioned and described is still in full force and effect and has not been appealed from or in any other way changed, modified or suspended.

IX. Petitioners and relators show that the issuance of the Writ of Mandamus prayed for herein will not cause any confusion or disorder in the public service or in the arrangements for and the conduct of the said Village election in the said Village of Lyons; and further show that

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the issues raised and set forth in this petition for mandamus may readily be heard and determined in ample time before the said Village election to permit the ballots for the said Village election to be printed in compliance with the order of this Court herein.

X. Petitioners and relators show that on April 3, 1945, before the filing of the petition for mandamus, petitioners and relators duly made a written demand on the defendants and each of them requesting and demanding that they place and print the names of petitioners and relators on the official ballot to be used in the said Village election in the Village of Lyons on to-wit, April 17, 1945; that a true and correct copy of the said written demand as so made on the said defendants is attached hereto as Exhibit "D" and duly made a part hereof.

But notwithstanding such demand and request, petitioners and relators show and charge that the said defendants have announced and publicly proclaimed that they will not abide by the said demand and further have announced and proclaimed that they will not place or print the names of petitioners and relators on the said ballots for the said election in the said Village of Lyons on to-wit, April 17, 1945.

244 XI. Petitioners and relators and each of them show and charge that they and each of them have a lawful and valid right to have their names printed on the ballot to be used at the said Village election in the Village of Lyons on April 17, 1945; that the attempt or effort or plan of the defendants or either of them to prevent petitioners and relators from having their names so printed on the said ballots constitutes a usurpation of authority on behalf of the said defendants contrary to law; and that petitioners and relators are without right or remedy or relief in the premises unless by the action of this Court in accordance with the prayer of this petition.

XII. Your petitioners and relators duly show that whereas the defendant, Ralph E. White, has in some respects and for some purposes in connection with the forthcoming Village election in the said Village of Lyons purported to act as and for Village Clerk of the said Village. Nevertheless the said defendant Joseph F. Janda has heretofore and for more than one year last past been the actual and duly acting Clerk of the said Village of Lyons and has not resigned or relinquished the said office down to

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the time of the filing of this petition; that by reason of the matters set forth in this paragraph of this petition there may be some confusion or contradiction as between the defendants as to which of them is the Clerk of the Village of Lyons; and your petitioners and relators therefore ask that this Court determine that issue or question in this case and grant petitioners and relators such relief in the premises as the Court may see fit.

And petitioners and relators show that they have made both of the parties herein named as defendants, defendants to this petition for the reasons set forth in this paragraph of this petition.

245 Wherefore, petitioners and relators respectively pray that a peremptory Writ of Mandamus may be issued herein, under the seal of this Honorable Court, directed to the defendants Ralph E. White and Joseph F. Janda, who are hereby made defendants to this petition commanding them forthwith to abide by such orders and judgments as the Court may enter herein in the premises; and particularly to cause the names of petitioners and realtors and each of them to be printed on the official ballots to be used in the said Village of Lyons at the said election on April 17, 1945, all as hereinabove alleged; and further commanding the defendants and each of them to take such other steps and actions in the premises as may be particularly directed to them or either of them by this Honorable Court; and petitioners and relators pray for such other and further orders and relief in the premises as law and justice and equity may require.

May It Please the Court to issue a Writ of Mandamus herein returnable on the 10th day of April, A. D. 1945, directed to the defendants Ralph E. White and Joseph F. Janda, commanding them and each of them to show cause why the peremptory Writ of Mandamus should not issue forthwith against them as prayed for in this petition.

Lyman F. Martin,
Cecil Grgurich,
Joseph Cerny,
Henry J. Metz,
John F. Gazarek,
Frank J. Kucera,
By Urban A. Lavery, and
Frank J. Lexa,
*Their Attorneys.*

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Affidavit and Jurat.

246 EXHIBIT A.

CLERK'S OFFICE

VILLAGE OF LYONS

Cook County, Illinois

RALPH E. WHITE
VILLAGE CLERK

March 17, 1945

Hon. Edmund K. Jarecki
County Judge
Cook County, Ill.

Dear Sir:

Objections to the petition for certificates of nomination of the Regular Peoples Party were filed with me today, March 17, 1945, at 5:30 P.M. by Karl Schimmelphennig and O. H. Felton, both residents of the Village of Lyons and legal and registered voters thereof.

As required by law I am herewith enclosing the original certificates of nomination filed by the Regular Peoples Party on the 13th day of March, 1945, and the original and a copy of the objectors' petition filed by Karl Schimmelphennig and O. H. Felton.

I have been advised by our Village Attorney, Mr. Joseph I. Bulger that I must send these papers to you immediately by registered mail and I should notify you who the other two members of the Municipal Officers Electoral Board are. They are:

Ralph E. White, 4130 Maple Avenue, Lyons, Ill.

Louis Hoffman, 4140 Anna Street, Lyons, Ill.

Mr. Hoffman is the oldest sitting trustee in the number of years of service on the Lyons Village Board.

247 Theofil T. Bulat, President of the Village Board of Trustees of the Village of Lyons, cannot act as Chairman of the Municipal Officers Electoral Board because he is a candidate for re-election, in which event the statute provides that you as County Judge shall act as Chairman of said Board.

Will you therefore please advise and notify Mr. Louis Hoffman at the above address and myself as Village Clerk as to when the hearing will be held on the objections to

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the certificate of nomination filed with me as above stated. I further understand from our Village Attorney that this hearing must be held not less than three or more than five days after the receipt by you of the certificates of nomination and the objectors' Petition.

Yours very truly,
Ralph E. White (Signed)
*Village Clerk.*

EXHIBIT B.

Judgment order entered March 26, 1945, in Case entitled *People Ex rel. Martin, et al.* v. *The Hon. Edmund K. Jarecki*, No. 45 C 2198, Circuit Court of Cook County:

JUDGMENT IN MANDAMUS.

This matter coming on to be heard in open court before the undersigned as one of the judges of the Circuit Court of Cook County; and the plaintiffs being represented in court by Urban A. Lavery, their attorney; and the defendant being represented in court by his attorney, William J. Tuohy, State's Attorney of Cook County, by Gordon Nash, Assistant States Attorney, and having duly entered his appearance herein by his said attorney;

248 And this matter being submitted to the Court on the merits by agreement of the plaintiffs by their said attorney and the defendant by his said attorney; and the defendant having duly entered his oral motion *ora tenus* to dismiss the Petition for Mandamus herein as amended;

And the Court having considered the Petition for Mandamus herein as amended and the said Motion of the defendant above mentioned and having heard arguments of counsel for both plaintiffs and defendant in the premises, doth find the issues for the plaintiffs and against the defendant upon the defendant's said Motion; and the defendant having failed to plead further in the premises;

The Court Now Finds that the Municipal Electoral Board for the Village of Lyons, mentioned and described in the said Petition for Mandamus as amended, was illegally constituted; and was particularly illegally constituted for the reason that one Ralph E. White, purporting to act as a member of the said Electoral Board by virtue of his being Village Clerk of the Village of Lyons, was not in truth and

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in fact Clerk of the Village of Lyons at the time of the convening and hearing of the said Electoral Board and therefore had no power or authority to act as a member of the said Electoral Board.

Wherefore, the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons, is Hereby Directed and Ordered to enter a finding in the proceedings of the said Board, to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law and that the 249 said Electoral Board, therefore, should be dissolved; and the said defendant is further Ordered and Directed, forthwith, to return all Certificates of Nomination or nomination papers and other documents now in his possession as such purported Chairman of the said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve the said purported Electoral Board.

Enter
(Signed) Harry M. Fisher,
*Judge of the Circuit Court of Cook County.*

Dated March 26, 1945.

(Said order is marked Petitioner's Exhibits "B-1" and "B-2".)

PETITIONER'S EXHIBIT "C."

March
Twenty-Sixth
1945

Hon. Ralph E. White
Village Clerk
Village Hall
4130 Maple Avenue
Lyons, Illinois

*In re:* Objections of Karl Schimmelphennig, Et. al., to the Nominating Petition of "Regular Peoples" Party.

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Dear Sir:

Circuit Judge Harry Fisher today issued a writ of Mandamus, directing me to return all papers in the above
250 entitled matter to you, on the ground that the Electoral Board was illegally constituted.

In accordance with the directions of this mandate, I have enclosed the original Objections and the Petitions of the "Regular Peoples Party" and the "Regular Progressive Citizens Party" of the Village of Lyons, inasmuch as the mandamus action automatically ends the action of the Electoral Board.

Very truly yours,
(Signed) Edmund K. Jarecki,
*County Judge.*

BKJ.MC
Encl.

PETITIONER'S EXHIBIT "D."

WRITTEN DEMAND.

To: Ralph E. White, Pretended Village Clerk
of the Village of Lyons
4130 South Maple Avenue
Lyons, Illinois
and
Joseph F. Janda, Acting Village Clerk or
Clerk *pro tem* of the Village of Lyons
8312 West 44th Place
Lyons, Illinois

Dear Sirs:

The undersigned hereby jointly and severally each demand that you place their names upon the official ballot to be voted on in the Village election to be held in the Village of Lyons April 17, 1945, as candidates of the Regular Peoples Party as follows:

Lyman F. Martin, Village President
Cecil Grgurich, Village Clerk
251 Joseph Cerny, Village Trustee
Henry J. Metz, Village Trustee
John F. Gazarek, Village Trustee
Frank J. Kucera, Police Magistrate

in accordance with the Certificate of Nomination duly filed by the Regular Peoples Party of the Village of Lyons and the statements of candidacies attached thereto executed by the undersigned.

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The undersigned will produce at your homes or offices the original Certificate of Nomination which was improperly and illegally returned to Paul H. Stednitz as Chairman of the caucus held by the Regular Peoples Party of Lyons, Illinois at such time and place as you may designate in writing to their attorney, Urban A. Lavery, 33 South Clark Street, Chicago, Illinois.

Dated this 3rd day of April, A. D. 1945.

Respectfully submitted,
Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, Joseph F. Gazarek and Frank J. Kucera

By .....
*Their Attorney and Duly Authorized Agent.*

Notice of motion given by plaintiff to defendants for April 10, 1945, to set cause for immediate hearing served by mailing to defendants on April 7, 1945.

Petition for change of venue filed April 12, 1945 as follows:

252 State of Illinois } ss.
County of Cook }

IN THE
SUPERIOR COURT OF COOK COUNTY

People of the State of Illinois ex rel Lyman F. Martin, *et al.*, *Plaintiffs*
*vs.*
Ralph E. White, *et al., etc., Defendants*
No. 45 S 6174

PETITION FOR CHANGE OF VENUE.

Your petitioners, Defendants in the above entitled matter, by Joseph I. Bulger, their attorney, respectfully show that they fear they will not receive a fair and impartial trial in this cause in this court because they believe that the Honorable Joseph A. Graber, one of the Judges in this

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Court, and also the following Judges of said Court, are prejudiced against your petitioners-defendants: Charles A. Williams, Robert E. Crowe, William J. Lindsay and Peter H. Schwaba.

Your petitioners further represent that knowledge of such prejudice did not come to your petitioners until the 6th day of April, 1945.

Your petitioners therefore pray change of venue in this cause from Joseph A. Graber, Charles A. Williams, Robert E. Crowe, William J. Lindsay and Peter H. Schwaba.

(signed) *Ralph E. White*
Ralph E. White (typed)
(signed) *Joseph F. Janda*
Joseph F. Janda (typed)

253 State of Illinois } ss.
County of Cook }

Ralph E. White and Joseph F. Janda, upon oath depose and say that they are defendants in the above entitled cause and the petitioners named in the above and foregoing petition for change of venue by them subscribed, and that the facts set forth therein are true in substance and in fact.

(signed) *Ralph E. White*
(typed) Ralph E. White
(signed) *Joseph F. Janda*
(typed) Joseph F. Janda

.....
*Attorney for Defendants.*

Notice of motion by attorney for defendants to attorneys for plaintiffs states that on April 12, 1945 petition will be presented before Judge Graber for change of venue, copy of which is attached. Notice and petition receipted for on April 11, 1945, by attorneys for plaintiff.

Motion filed April 11, 1945, to dismiss and strike plaintiffs' petition:

Now come the defendants, Ralph E. White and Joseph F. Janda, by Joseph I. Bulger, their Attorney, and move the Court to dismiss and strike the Petition in Mandamus and in support of said motion give the following reasons and grounds therefor:

1. That the said Petition for Mandamus shows on its face to be insufficient in law in that it fails to allege facts

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showing a clear legal right to said Writ of Mandamus.

254 2. That said Petition for Mandamus is ambiguous, uncertain and indefinite in its averments as the rights it seeks to establish are doubtful in nature and impossible of performance.

3. That the said petition shows on its face that objections were filed against the certificate of nomination of the Regular Peoples Party; that according to the allegations of said Petition the objections are undisposed and pending; that based upon said allegations the plaintiffs who are candidates have no legal right to have their names placed upon the election ballot, nor can they claim that right; that some affirmative averment must appear upon the petition as to the disposition of the said objections, that in all such respects the petition is insufficient in law; that it fails to state a clear legal right for the Writ; that it fails to establish a duty upon the defendants for which Mandamus lies.

4. That the judgment of mandamus order alleged in the Petition shows upon its face that it is void for want of jurisdiction over the said Electoral Board; that the Circuit Court in that case had before it only one of the three (3) members thereof; that it is void for the reason that it directs one member of a subordinate tribunal vested with discretionary power to act in a particular manner when the said member has no statutory power to do the thing ordered, and can only act in conjunction with the other members of such board and as a part of a majority thereof.

5. That no duty was imposed nor did the Circuit Court vest any power upon the said Edmund K. Jarecki to dissolve said Municipal Electoral Board and the said mandamus order shows upon its face that it does not vest

255 said Edmund K. Jarecki with such power or authority.

6. That under the allegations of said Petition the Village Clerk has no duty to put said Peoples Party ticket upon the ballot for said election, as said Petition shows upon its face by the allegations therein that said ticket is pending upon objections thereto.

7. That a Mandamus is not a writ of right and issues only when the duty of the defendants is certain and the right to have it performed is legally clear; that under the facts alleged the duty is non-existent or at least doubtful and ambiguous.

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8. That this Court has no power in Mandamus to try the title to the office of Village Clerk; that the allegations of said Petition regarding said office are confusing, uncertain and immaterial.

9. That said Petition is replete with legal conclusions unsupported by sufficient facts to establish any duty upon the defendants due and owing to plaintiffs, nor have they or each of them violated any rights accruing to plaintiffs in the premises.

10. That said petition fails to state a cause of action in any respect; that said petition is insufficient in law; that said petition is and abounds with mere legal conclusions of the pleader.

11. That the said Municipal Electoral Board is established by law; that said Board was legally and lawfully constituted according to law; that its findings and rulings are final; and in that respect the petition herein fails to allege in what respects said board is illegally and unlawfully constituted, covering mere conclusions unsupported by facts.

256 12. That the said Petition is insufficient in law in that it fails to allege the rulings and findings of said Electoral Board, if any were had, in connection with the objections as shown by the Mandamus Petition herein.

13. That these plaintiffs have not used due diligence in the premises.

14. That these Plaintiffs are guilty of laches.

15. That the Plaintiffs are estopped from maintaining this action as the matters and things herein complained of are res adjudicata.

16. That the Regular Peoples Party or its duly authorized officers are necessary party to this suit.

17. That the Plaintiffs herein are not the proper parties to bring this action.

18. That said Petition is replete with uncertain allusions with respect to the Municipal Electoral Board; what persons composed its membership; what acts if any were performed by said Board; whether or not said Electoral Board convened; the date thereof; what, if any, ruling was entered upon their proceedings which are necessary facts being purposely avoided by the plaintiffs.

19. And for other defects appearing upon the face of the Complaint, the defendants herein move that said Peti-

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tion in Mandamus be dismissed with cost assessed, most wrongfully sustained by the defendants, and against plaintiffs.

Ralph E. White
Joseph F. Janda
By Joseph I. Bulger
*Their Attorney.*

257 Certificate of counsel that the said motion is not interposed for delay and is well founded in point of law.

Answer of defendants filed April 15, 1945:

ANSWER.

Now come the defendants, by Joseph I. Bulger, their Attorney, and answering the Complaint herein say:

1. That defendants have no knowledge upon which to form an opinion or make answer to the allegations contained in paragraph one (1) of said Complaint; that the things alleged therein are peculiarly within the knowledge of the plaintiffs and therefore demand strict proof thereof.

2. Answering paragraph two (2) defendants deny that they and each of them duly filed with the Village Clerk of the Village of Lyons certain certificates of nomination or nomination papers, but states the fact to be that said certificate of nomination and nomination papers were filed by the Chairman and Secretary of the "Regular Peoples Party" whose names were subscribed upon said certificates of nomination or nomination papers a photostatic copy of which appear in defendants Exhibit marked "A" which Exhibit is a photostatic copy of the pleadings in case No. 45-C-2198, Circuit Court Cook County, Illinois, photostatic copy of the nomination papers of the regular Peoples Party appear therein as Exhibit D-1 to D-4 both inclusive, which are made a part hereof; all of which are mentioned in Plaintiff's Complaint herein.

3. Answering paragraph 3 of said Complaint, the defendants deny that petitioners herein are entitled to
258 have their rights enforced by a petition in mandamus and deny that they individually or collectively are entitled to have their names printed on the election ballot to be used in the Village of Lyons, on the 17th day of April, 1945 under the party label or ticket of the "Regular Peoples Party," and answering further allege that a cer-

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tificate of nomination or nomination papers were filed with the defendant Ralph E. White, Village Clerk of the Village of Lyons, Cook County, Illinois, on the 13th day of March A. D. 1945, at about the hour of 10:30 P. M. in the Village Clerk's office in the Village Hall, for which the said defendant, Ralph E. White, Village Clerk, gave his receipt therefor, that, thereafter on or about March 18, 1945 said Ralph E. White, Village Clerk, received by registered mail, a paper the contents of which disclosed that two persons Carl Schimmelphennig and O. H. Felton qualified registered electors of the Village of Lyons, filed objections to the Regular Peoples Party papers, a copy of said objections appear in defendants' Exhibit A (as Exhibit A therein) which are made a part hereof by reference.

4. That upon advice of the Village Attorney the said objections and the certificates of Nomination or nomination papers of the Regular Peoples Party together with the Village Clerk's letter was sent by registered mail to Hon. Edmund K. Jarecki; the reasons for so doing are stated in Village Clerk's letter, a photostatic copy of which appears in defendant's Exhibit A (as Exhibit B therein).

And answering further the following proceedings took place with respect thereto.

(A) Call by Edmund K. Jarecki, as Chairman of the Lyons Municipal Electoral Board, sent to the defend-
259 ant Ralph E. White and Louis Hoffman, oldest sitting trustee, calling a meeting of the said Electoral Board a photostatic copy of which appears in defendants Exhibit A (as Exhibit F).

(B) Letter of Ralph E. White to each of the candidates against whom the objections were filed a photostatic copy of which appear in defendant's Exhibit A (as Exhibit F), advising said parties of the objections.

(C) That thereafter and to-wit on March 23, 1945 at 10:15 a.m., the said Municipal Electoral Board met and convened according to law in the courtroom of the Hon. Edmund K. Jarecki as Chairman of said Board, together with Ralph E. White, Village Clerk and Louis Hoffman, oldest sitting trustee in point of service; that said Board deliberated and considered the said objections and that a transcript of said proceedings appear in defendants' Exhibit A (as Exhibits H-1 to H-7), inclusive; showing therein that the Board voted and recorded its findings and

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rulings; that said Board suspended or adjourned its meeting until the 27th day of March, 1945, upon the request of counsel of the relators.

(D) That, thereafter on, to-wit, the 27th day of March, 1945, the said Board, on advice of counsel, continued with the proceedings of said Board; a transcript of said proceedings are attached hereto and made a part thereof and marked Exhibit "B".

5. That, to-wit, on the 22nd day of March, 1945, the plaintiffs in this case and also the plaintiffs in Circuit Court case No. 45-C-2198, filed their complaint of Mandamus; a photostatic copy of said pleadings are attached hereto and Made a part hereof and marked Defendants' Exhibit "A".

260 6. That on, to-wit, March 26, 1945, the said Edmund K. Jarecki sent the following letter to Ralph E. White as Village Clerk a copy of said letter appears in the Complaint therein as Plaintiff's Exhibit C, which is made a part hereof by reference.

7. That on, to-wit, March 26, 1945 the Honorable Harry M. Fisher, one of the Judges of the Circuit Court, upon the said pleadings (Defendant's Exhibit "A") herein and Plaintiff's Exhibit B-1 herein, issued a Mandamus Order which is made a part hereof, by reference.

8. That on the 27th day of March, 1945, the said Ralph E. White and Louis Hoffman, majority members of said Electoral Board, sent their rulings and findings to each of the said candidates of the "Regular Peoples Party" and to the Chairman and Secretary of said established political party, a photostatic copy of which is attached hereto, made a part hereof and marked Defendants' Exhibit "C".

9. That the Plaintiffs caused the Circuit Court in case No. 45-C-2198 to enter a rule to show cause upon said Ralph E. White and Louis Hoffman, returnable on the 4th day of April, 1945; copy of said rule and order are attached hereto and made a part hereof and marked Defendants' Exhibit "D".

10. That on, to-wit, April 4, 1945 said defendants appeared with their counsel and then and there, after leave of court first had and obtained, filed their motion to dismiss and discharge said rule for lack of jurisdiction; a copy of said motion is attached hereto, made a part hereof, and marked Defendants' Exhibit "E".

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261 11. That, on to-wit, April 6, 1945, upon argument of counsel of all the parties, said Circuit Court sustained said respondents motion to dismiss and discharge and did dismiss and discharge said respondents motion; that a transcript of that hearing is attached hereto, made a part hereof, and marked Defendants' Exhibit "F".

12. Answering paragraph 5, defendants admit that these plaintiffs filed their suit No. 45-C-2198 in the Circuit Court but deny that letter dated March 17, 194[illegible] signed by said Ralph E. White and Louis Hoffman, is illegal and invalid and with no authority in law to pass upon said objection, and deny that the process in the Circuit Court mandamus proceedings No. 45-C-2198 that defendant Edmund K. Jarecki could bind said Ralph E. White and Louis Hoffman by entering his appearance and confessing the allegations of said complaint, and answering further say that those proceedings were null and void and an attempt to destroy and hold for naught the right, duty and obligations of the Municipal Electoral Board to functioning as a legal, lawful and statutory body, and an attempt to restrain the said Electoral Board to do its statutory duty as an Executive branch of the State Government over which it is of equal dignity with the Judicial and Legislative branches of our State Government.

13. Defendants admit the allegations contained in paragraph 6 of said Complaint, that said Jarecki was duly served with a copy of the writ, and answering further aver that said Mandamus order is null and void and of no effect upon the members of said Electoral Board
262 or upon the proceedings had by said Board in the hearing and ruling and findings upon the objections filed with it; that said Mandamus order is contrary to the express provisions of the Statute creating said Electoral Board, and these respondents admit the writing of said letter and return of papers but deny all other allegations in paragraph 6.

14. Answering paragraph 7 of said Complaint, defendants deny that the relators and petitioners herein are entitled to have their names printed on the Village Election Ballot under Chapter 46, Section 16-5 of the Election Code and answering further allege that proceedings on objections to the relators and petitioners certificate of nominations were had under the provisions of Chapter 46, Secs.

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10-1, 10-2, 10-8, 10-9, subparagraphs 4, 5, Sec. 10-10, and answering further these defendants say that said Electoral Board met, convened, considered the objections to plaintiffs certificates of nomination or nomination papers, ruled, sustained the said objections, sent their findings and rulings to the candidates of the Regular Peoples Party according to the Statute as made and provided in Sec. 10-10, Chap. 46 of Election Code, a copy of said findings and rulings are attached hereto, made a part hereof, and marked Defendants' Exhibit "G"; and answering further defendants say that said matters and things in that behalf are res adjudicata; that Chap. 46, Sec. 10, sub-paragraphs 5 and 6, provides as follows:

"The Electoral Board shall take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they are
the genuine certificate of nomination or nomination
263 papers which they purport to be, and whether or not
in the case of the certificate of nomination in question it represents the decision of the caucus or convention issuing it, correctly, and in general shall decide whether or not the certificate of nomination papers on file are valid or whether the objections thereof should be sustained and the decision of a majority of the electoral board shall be final.

Within twenty-four hours after the electoral board has made its decision, it shall transmit, by registered mail, a certified copy of its ruling together with the original certificate of nomination or nomination papers and the original objector's petition to the officer or board with whom the certificate of nomination or nomination papers as objected to, were on file, and such officer or board shall abide by and comply with the ruling so made to all intents and purposes."

15. Answering paragraph 8 of said Complaint, defendants admit the allegations therein but on the contrary, say that said order is null and void and of no effect; that said order does not become final, for whatever its value may be, until April 26, 1945.

16. Answering paragraph 9 petitioners deny that the issuance of this Court's writ will not create confusion and disorder in the conduct of said election but on the contrary say that Plaintiffs are attempting to use this court to command the performance of an illegal and unlawful act on the

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part of these defendants and in effect to destroy and hold for naught the proceedings of the Electoral Board.

16A. Defendants further aver that Plaintiffs have not used due diligence in the premises in that they purposely omitted and refused to make Ralph E. White and Louis
264 Hoffman parties to the Circuit Court mandamus suit 45-C-2198 where the rights of all parties including the members of the Electoral Board proceedings could have been heard and determined; that Plaintiffs do not come into this court in good faith but are persistent in their efforts to harass, vex and coerce the defendant Ralph E. White.

17. Answering paragraph 10, defendants admit receipt of said demand but say that said demand does not cure or abrogate the previous rulings and findings of the Municipal Board, copies of which were served upon Plaintiffs according to law and answering further that these defendants have no power and authority to disregard the rulings and findings of the Electoral Board and to hold capriciously and arbitrarily that the acts and doings of said Electoral Board are for naught as said Electoral Board proceedings were had according to law; that said plaintiffs and each of them with their eminent attorneys appeared before said Electoral Board in a body, together with the officers of the Regular Peoples Party, were heard in argument, participated in the deliberations of said Board, upon said objections and now ask this honorable court to overrule the majority decision of said Electoral Board and hold the same for naught.

18. Answering paragraph 11 of said Complaint, defendants deny that the relators have any valid or legal right to have their names printed upon the Electoral Ballot for the village election to be held on Tuesday, April 17, 1945; further deny any attempt or effort or plan of the defendants, or either of them, to prevent the petitioners and relators from having their names printed upon the
265 electoral ballot and deny that any act or acts in the premises constitutes a usurpation of authority contrary to law, but on the contrary and answering further aver that petitioners and relators have had their remedy passed upon according to law before the Electoral Board whose findings and rulings, by a majority thereof, are final.

19. Answering paragraph 12 of said Complaint, Defendants say that this court in a mandamus proceeding

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has no power to pass upon the title of a Village Officer and answering further say that defendant Ralph E. White is the duly elected and acting Clerk of the Village of Lyons, Cook County, Illinois, that since his qualification he has been functioning as such, that he is the keeper of the records and seal of said office, that he has not resigned, abandoned nor relinquished said office, and answering further defendants say the defendant Joseph F. Janda never was the elected Village Clerk nor appointed to such office but is only a part time office Clerk in the office of the Village Clerk.

19A. That on March 28, 1945, the said Ralph E. White and Louis Hoffman sent a letter by registered mail notifying the Regular Peoples Political Party and its officers of the ruling of the said Electoral Board, a copy of which letter is attached hereto and made a part hereof and marked Defendants' Exhibit "H".

19B. That on March 28, 1945, the said Ralph E. White and Louis Hoffman sent a letter by registered mail notifying each of the candidates of the Regular People's Party of the rulings of the said Electoral Board which letter is attached hereto, made a part hereof and marked Defendants' Exhibit "I".

266 20. That the said petition for the Mandamus shows on its face to be insufficient in law in that it fails to allege facts showing a clear legal right to said writ of Mandamus.

21. That said Petition for Mandamus is ambiguous, uncertain and indefinite in its averments as the rights it seeks to establish are doubtful in nature and impossible of performance.

22. That the said petition shows on its face that objections were filed against the certificate of nomination of the Regular People's Party; that according to the allegations of said Petition the objections are undisposed and pending; that based upon said allegations the plaintiffs who are candidates have no legal right to have their names placed upon the election ballot, nor can they claim that right; that some affirmative averment must appear upon the petition as to the disposition of the said objection, that in all such respects the petition is insufficient in law; that it fails to state a clear legal right for the Writ; that it fails to establish a duty upon the defendants for which Mandamus lies.

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23. That the judgment of mandamus order alleged in the petition shows upon its face that it is void for want of jurisdiction over the said Electoral Board; that the Circuit Court in that case had before it only one of the three (3) members thereof; that it is void for the reason that it directs one member of a subordinate tribunal vested with discretionary power to act in a particular manner when the said member has no statutory power to do the thing ordered, and can only act in conjunction with the other members of such board and as a part of a majority thereof.

267 24. That no duty was imposed nor did the Circuit Court vest any power upon the said Edmund K. Jarecki to dissolve said Municipal Electoral Board and the said mandamus order shows upon its face that it does not vest said Edmund K. Jarecki with such power or authority.

25. That under the allegations of said petition the Village Clerk has no duty to put said Peoples Party ticket upon the ballot for said election, as said petition shows upon its face by the allegations therein that said ticket is pending upon objections thereto.

26. That a Mandamus is not a writ of right and issues only when the duty of the defendants is certain and the right to have it performed is legally clear; that under the facts alleged the duty is nonexistent or at least doubtful and ambiguous.

27. That this Court has no power in Mandamus to try the title to the office of Village Clerk; that the allegations of said petition regarding said office are confusing, uncertain and immaterial.

28. That said petition is replete with legal conclusions unsupported by sufficient facts to establish any duty upon the defendants due and owing to plaintiffs, nor have they or each of them violated any rights accruing to plaintiffs in the premises.

29. That said petition fails to state a cause of action in any respect; that said petition is insufficient in law; that said petition is and abounds with mere legal conclusions of the pleader.

30. That the said Municipal Electoral Board is established by law; that said Board was legally and lawfully constituted according to law; that its findings and rulings are final; and in that respect the petition herein fails

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268 to allege in what respect said board is illegally and unlawfully constituted, covering mere conclusions unsupported by facts.

31. That the said petition is insufficient in law in that it fails to allege the rulings and findings of said Electoral Board, if any were had, in connection with the objections as shown by the Mandamus Petition herein.

32. That these plaintiffs have not used due diligence in the premises.

33. That these Plaintiffs are guilty of laches.

34. That the Plaintiffs are estopped from maintaining this action as the matters and things herein complained of are res adjudicata.

35. That the Regular Peoples Party or its duly authorized officers are necessary party to this suit.

36. That the Plaintiffs herein are not the proper parties to bring this action.

37. That said Petition is replete with uncertain allusions with respect to the Municipal Electoral Board; what persons compcsed its membership; what acts if any were performed by said Board; whether or not said Electoral Board convened; the date thereof; what, if any, ruling was entered upon their proceedings which are necessary facts being purposely avoided by the plaintiffs.

Wherefore these defendants pray and move this Honorable Court to dismiss the petition in Mandamus herein, and to assess the cost most wrongfully sustained by them against the defendants.

Ralph E. White and
Joseph F. Janda
By Joseph I. Bulger
*Their Attorney and Agent.*

269 Oath of Joseph I. Bulger says that he is the Attorney of the Defendants in the above entitled cause; that he has read the above and foregoing answer to said petition in Mandamus and he knows the contents thereof and that the matter and things alleged are true in substance and in fact.

EXHIBIT A ATTACHED TO DEFENDANTS' ANSWER.

Exhibit A to Defendants' Answer consists of the pleadings in Case No. 45 C 2198 in the Circuit Court of Cook County and copies of documents mentioned in said com-

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plaint in Case 45 C 2198, said case being entitled People ex rel. Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, plaintiffs vs. Honorable Edmund K. Jarecki, as hereinafter designated and described, defendant.

Summons in Case 45 C 2198 dated March 22, 1945 and returned served on said Jarecki on March 22, 1945.

Petition for Mandamus filed in Circuit Court of Cook County, March 22, 1945, as follows, in: The People of the State of Illinois ex rel. Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera, Plaintiffs, vs. The Honorable Edmund K. Jarecki, as hereinafter described, Defendant, No. 45 C 2198.

PETITION FOR MANDAMUS.

Come now the above named relators and petitioners by Urban A. Lavery, their attorney, and respectfully show unto the Court as follows:

270 I. Your relators and petitioners now are and for several years last past have been residents of the Village of Lyons in the County of Cook and State of Illinois, and citizens of the State of Illinois and of the United States, and have been during all that time, and at the time of filing this petition are duly qualified and registered electors in the said Village of Lyons and in the County of Cook and in the State of Illinois.

II. Petitioners and relators show that heretofore, and within the time provided by law, they and each of them have duly filed with the Clerk of the said Village of Lyons their Certificates of Nomination or nomination papers for the offices of President of the Village Board, by Lyman F. Martin; Village Clerk, by Cecil Grgurich; Village Trustees, by Joseph Cerny, Henry J. Metz, John F. Gazarek; and Police Magistrate, by Frank J. Kucera, under the party or ticket of "Regular Peoples Party." And your relators and petitioners further show that such Certificates of Nomination or nomination papers were duly filed in accordance with the Statutes of the State of Illinois applicable thereto, namely, Section 10-6 of Chapter 46 of the Revised Statutes of the State of Illinois.

III. Petitioners and relators show that they bring this Petition for Mandamus to enforce their rights to have the said Certificates of Nomination or nomination papers duly

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respected by the election authorities of the said Village of Lyons and by all other election officials acting under the authority of the Statutes of the State of Illinois, including particularly the defendant hereinafter named.

271 IV. Petitioners and relators respectfully show that for the said election in the Village of Lyons above mentioned one other party ticket, and one party ticket only, was also filed with the said Clerk of the Village of Lyons, to wit, the so-called and so designated "Regular Progressive Citizens" ticket, with the result that (if the laws of the State of Illinois are duly respected concerning the matters set forth in this Petition) there would be two tickets and two tickets only at the forthcoming election in the said Village of Lyons, to wit, the ticket and the candidates represented by the names of your petitioners and relators, under the party label of "Regular Peoples Party," and also the ticket and candidates represented by the said "Regular Progressive Citizens" ticket.

V. Petitioners and relators show that the original Certificates of Nomination or nomination papers for both of the aforementioned tickets or parties are now in the possession and custody and control of the defendant, the Honorable Edmund K. Jarecki, and that your petitioners and relators will produce the said certificates of Nomination or nomination papers in Court at the hearing of this Petition, either by the consent of the defendant last named or by subpoena duces tecum issued out of this Court in accordance with law, for the inspection and consideration of the Court.

VI. Petitioners and relators further show that on or about the 17th day of March, 1945, there was filed in the office of the Village Clerk of the Village of Lyons certain purported Objections to the Certificates of Nomination or nomination papers theretofore filed in that office by

272 petitioners and relators, a copy of the said Objections being attached to this Petition as "Exhibit A" and made a part hereof; that thereafter and on or about the 19th day of March, 1945, the Village Clerk of the Village of Lyons forwarded by registered mail to the defendant, the Honorable Edmund K. Jarecki, addressed as "County Judge, County Building, Chicago, Illinois," and the said defendant last mentioned duly received the said registered mail enclosing—

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1. A certain letter addressed by the Village Clerk to the said the Honorable Edmund K. Jarecki, a true copy of which letter is attached to this Petition as "Exhibit B" and made a part hereof;

2. The complete file of papers constituting the Certificates of Nomination or nomination papers for the candidacy of petitioners and relators under the name and ticket of "Regular Peoples Party"; attached hereto as Exhibit D and made a part hereof;

3. The complete file of papers constituting the Certificates of Nomination or nomination papers for the candidacy of the candidates appearing under the ticket of "Regular Progressive Citizens" ticket; attached hereto as Exhibit E and made a part hereof.

VII. Petitioners and relators further show that thereafter and on, to wit, the 20th day of March, 1945, the defendant, the Honorable Edmund K. Jarecki, sent a Notice or "call" to Petitioners and relators, and also to the objectors whose names are signed to the Objections, attached to this petition as Exhibit A, and to certain other persons,
273 a copy of the said Notice or "Call" being attached hereto as "Exhibit C" and made a part of this petition; that in and by the said Notice the said defendant, the Honorable Edmund K. Jarecki, duly called a meeting of the said Electoral Board to hear the said Objections on, to wit, Friday, the 23rd day of March, 1945, in accordance with the matters set forth in the said Notice.

VIII. Relators and petitioners show that the only ground or point or matters raised and set forth in the said Objections to the Certificates of Nomination or nomination papers is the alleged contention that the Village of Lyons has a population in excess of 5,000 and therefore does not come within the provisions of Section 10-1, Chapter 46, Illinois Revised Statutes, which section, together with the succeeding sections of Article 10 of said Chapter 46, regulates and controls nominations made by Certificates of Nomination or nomination papers as distinguished from nominations made by Party Convention or by Party Primaries; and relators and petitioners show unto this Court that in and by the said Objections no other ground or reason whatever for objecting to the Certificates of Nomination or nomination papers of these petitioners and relators is given or made or set forth other than the said alleged ground or reason of population.

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IX. Relators and petitioners show that the Village of Lyons is organized under and is regulated by the so-called "Cities and Villages Act" of the State of Illinois, being Chapter 24 of the Revised Statutes of Illinois; and your relators and petitioners further show that under Sec-
274 tion 1-9 of the said Cities and Villages Act it is provided as follows:

"Sec. 1-9. Population—Census. Whenever in this Act any provision thereof is based upon the number of inhabitants, the number of inhabitants of the municipality shall be determined by reference to the latest census taken by authority of the United States or this State, or of that municipality. It is the duty of the secretary of state, upon the publication of any State or United States census, to certify to each municipality the number of inhabitants as shown by that census. And the several courts in this State shall take judicial notice of the population of any municipality as the population appears from the latest Federal, State, or municipal census so taken."

X. And relators and petitioners show that the latest and only census of the Village of Lyons, as such, is the census taken by the Federal Government in the year 1940, and that no census of the said Village of Lyons has been taken since the year last mentioned by either the Federal Government or by the State of Illinois or by the Village of Lyons; and that as shown by the said Federal census of 1940 the population of the said Village of Lyons was less than 5,000, and was the figure of 4,960; and that such last-mentioned figure must be taken and observed for all elections to be held in the said Village until a new official census is taken either by the Federal Government or by the State of Illinois, or by the said Village.

XI. First Ground for Mandamus. Wherefore petitioners and relators show as a first ground for granting the Writ of Mandamus in this case—

A. That by reason of the matters and things set forth in this Petition for Mandamus the said "Objections"
275 above described to the Certificates of Nomination or nomination papers of these petitioners and relators is based solely on legal and justiciable grounds and not on a factual ground, and that under Section 10-9 of Chapter 46 of the Revised Statutes of Illinois, concerning "Electoral Boards—Hearing on Objections," it is only matters of fact

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and not questions of law that can be heard and determined by any of the Electoral Boards.

B. That by reason of the matters and things set forth in this Petition for Mandamus, neither the defendant, the Honorable Edmund K. Jarecki, nor either of the other members or persons named as the two remaining members of the said Electoral Board mentioned in Exhibit B, attached to this petition, nor any of them, have any jurisdiction or authority to pass upon or to consider the matters and things set forth in the said Objections; for the reason that no one of the said persons last mentioned, nor any or either of them, can hold or find or say, under the law, that the Village of Lyons has a population in excess of 5,000, as the said Objections set forth and contend.

XII. Second Ground for Mandamus. Petitioners and relators show, as a second ground for granting this Petition for Mandamus, that—

Under and by virtue of Section 10-8 of Chapter 46 of the Revised Statutes of the State of Illinois, the Village Clerk of the Village of Lyons was required, as a necessary and jurisdictional part of the process of forwarding the said "Objections" to the said purported local Electoral Board to

"transmit a copy by registered mail of the objector's petition to the candidate whose Certificate of nomination or nomination papers are objected to, addressed to the
276 place of residence designated In said Certificate of Nomination or nomination papers";

and petitioners and relators show that the said Village Clerk utterly ignored the said provisions of the statute and utterly failed to comply therewith, so far as any and all of these petitioners and relators, as candidates, are concerned; but on the contrary, the said Clerk merely sent by registered mail a certain letter, copy of which is attached hereto as "Exhibit F," and made a part of this petition.

And your petitioners and relators show that the neglect and failure of the said Clerk of the Village of Lyons to comply with the Statutes of the State of Illinois, as above indicated, vitiates and invalidates any proceedings or hearings whatsoever of the defendant, the Honorable Edmund K. Jarecki, or of the two other persons purported to be associated with him as constituting the said Electoral Board or any or either of them; and that therefore none of the persons last

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mentioned, or any or either of them, have any jurisdiction whatever to hear any objections to the Certificates of Nomination or nomination papers of any of the petitioners or relators herein.

XIII. Petitioners and relators show that on March 21, 1945, and before the filing of this Petition for Mandamus, they duly made a written demand on the defendant, the Honorable Edmund K. Jarecki, requesting and demanding that he forthwith return to the Village Clerk of the Village of Lyons, all papers and documents received by said defendant from the said Village Clerk in connection with the said Objections, as hereinabove alleged, and that such demand and request was made for the reasons and grounds set
277 forth in said written demand, a true copy thereof being hereto attached as "Exhibit G" and made a part of this petition.

But notwithstanding such demand and request, petitioners and relators show and charge that the said defendant, the Honorable Edmund K. Jarecki, has failed and refused to comply therewith.

XIV. Petitioners and relators, and each of them, show and charge that they, and each of them, have a lawful and valid right to have their names printed on the ballot to be used at the village election to be held in the Village of Lyons on April 20, 1945, all as set forth in the Certificates of Nomination or nomination papers of these petitioners and relators as hereinbefore mentioned and described; that the attempt or effort or plan of the defendant, the Honorable Edmund K. Jarecki (together with his two associates on the said Electoral Board), to hold any hearing on or concerning the said Objections above described, constitutes a usurpation of authority by the said defendant (and his associates), contrary to law; and that by reason of the premises set forth in this petition the said defendant ought by right forthwith to comply with the notice and demand of petitioners and relators hereinabove mentioned and described.

XV. Petitioners and relators therefore charge that by reason of the premises hereinabove set forth in this petition it was and is the legal duty of the defendant, the Honorable Edmund K. Jarecki, forthwith to return the said documents and papers heretofore lodged with him, as above described, to the Village Clerk of the Village of Lyons, all

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as demanded of him by these petitioners and relators.

278 XVI. Petitioners and relators show that the issuance of the Writ of Mandamus prayed for herein will not cause any confusion or disorder in the public service or in the arrangements for and conduct of the said village election in the said Village of Lyons; and further show that the issues set forth in this Petition for Mandamus may be heard and determined in ample time so as to do no injury or damage whatever to any person or to any candidate for office at the said Village election other than petitioners and relators.

Wherefore, petitioners and relators respectfully pray that a peremptory Writ of Mandamus may be issued herein, under the seal of this Honorable Court, directed to the defendant, the Honorable Edmund K. Jarecki, who is hereby made a defendant to this petition, commanding him forthwith to take such steps as will comply with the written demand of petitioners and relators hereinabove described, and particularly, to return the said Objections and all relating papers forthwith to the Clerk of the Village of Lyons, without any hearing or consideration thereof by the said defendant or any of his associates on the said local Electoral Board; and further commanding the defendant to take such other steps and actions in the premises as may be particularly directed to him by this Honorable Court; and petitioners and relators pray for such other and further orders and relief in the premises as law and justice and equity may require.

May it please the Court to issue a Writ of Mandamus herein, returnable on the 27th day of March, 1945, directed to the defendant, the Honorable Edmund K. Jarecki, commanding him to show cause why the peremptory Writ

279 of Mandamus should not issue forthwith against him, as prayed for in this petition.

Lyman F. Martin
Cecil Grgurich
Joseph Cerny
By *Urban A. Lavery*

Henry J. Metz
John F. Gazarek
Frank J. Kucera
(Signed)

Urban A. Lavery, *their Attorney.*

Urban A. Lavery
*Attorney for Petitioners*

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State of Illinois }
County of Cook } ss.

Lyman F. Martin, being first duly sworn, on oath deposes and says that he is one of the relators and petitioners in the above entitled cause and that as such he is authorized to make this affidavit on their behalf; that he has read the above and foregoing petition; that he knows the contents thereof, and the same is true in substance and in fact.

Lyman F. Martin (Signed)

Subscribed and sworn to before me this 21st day of March, 1945.

Frank J. Lexa (Signed)
*Notary Public.*

Exhibit A to Complaint in 45 C 2198: being objections to nominating petition of Regular Peoples party:

280 State of Illinois
County of Cook } ss.
Village of Lyons

BEFORE THE

## MUNICIPAL OFFICERS ELECTORAL BOARD OF THE VILLAGE OF LYONS

In re Matter of the objections to the Certificate of Nomination of the "Regular Peoples Party" for village offices of President of the Board of Trustees, Village Clerk, three Trustees, and Police Magistrate for the Village of Lyons, Cook County, Illinois

Now comes Karl Schimmelphennig, 7948 Ogden Avenue, Lyons, Illinois, and O. H. Felton, 4301 Prescott Avenue, Lyons, Illinois, and respectfully show that they are qualified electors and duly registered voters in the Village of Lyons and state that their interest in filing the following objections is that of citizens desirous of seeing that the election laws governing nominations of candidates are properly complied with, and therefore make and herewith file the following objections to the certificate of nomination of the "Regular Peoples Party" which purports to nominate the following candidates for the offices set opposite their respective names, to-wit:

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| Name of Candidates | Party or Political Principle Which They Represent | Offices to Which They Are Nominated |
|---|---|---|
| Lyman F. Martin | Regular Peoples Party | Village President |
| Cecil Grgurich | Regular Peoples Party | Village Clerk |
| Joseph Cerny | Regular Peoples Party | Village Trustee |
| Henry J. Metz | Regular Peoples Party | Village Trustee |
| John F. Gazarek | Regular Peoples Party | Village Trustee |
| Frank J. Kucera | Regular Peoples Party | Police Magistrate |

281 1. Your objectors respectfully show that in the heading of the certificate of nomination it is set forth that the abovementioned candidates represent the Regular Peoples Party.

2. You objectors further show that the certificate of nomination purports to be signed by Paul O. Stednitz, presiding officer, and Lester W. Schiefelbein, secretary; that the certificate of nomination also contains the following certification, to-wit:

> "We also certify that at the last preceding general election in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area, the Regular Peoples Party polled more than five percent of the entire vote cast in said Village of Lyons at said election."

3. Your objectors further show that in the certificate of nomination of the certification thereto the Regular Peoples Party designates itself as an existing political party.

4. Your objectors further show that the last preceding general election for the Village of Lyons was held on April 20, 1943, at which time the Regular Peoples Party issued a certification of nomination for three village trustees of the Village of Lyons.

5. Your objectors further show that at the general Village election held on April 20, 1943, the Regular Peoples Party polled more than five per cent of the total votes cast in such election.

6. Your objectors further show that the Regular Peoples Party is an existing political party which at the general election for Village officers then next preceding a primary cast more than five per cent of the entire vote.

282 7. Your objectors further show that an existing political party can nominate candidates only in a

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primary election and not by a caucus of qualified voters or by certificates of election. No primary election was held, in compliance with Article VII of the Election Code.

8. Your objectors further show that the Village of Lyons has a population exceeding five thousand.

9. Your objectors further show that the certificate of nomination filed by the Regular Peoples Party for the nomination of the aforesaid candidates *includes* the name of a political party which at the general election next preceding polled five per cent or more of the entire vote cast in a municipality for which the nomination is made, contrary to Article X of the election Code.

10. Your objectors further show that the said certificate of nomination of the Regular Peoples Party for the offices hereinbefore set forth contains the name and usurps the name of an established political party.

11. Your objectors further show that individual voters have no right to issue certificates of nomination under the name of an existing political party.

12. Your objectors further show that the said certificate of nomination is void and invalid and not in conformity with the provisions of the statute in such case made and provided, for the foregoing and other reasons which your objectors will more fully specify upon the hearing.

13. Your objectors further show that the electoral board designated under Article 10, Section 9, of the Election Code provides as follows:

"The municipal officers electoral board to hear and pass upon objections to the nominations of candidates
283 for officers of cities, villages and incorporated towns shall be composed of the mayor or president of the board of trustees of the city, village or incorporated town, and the city, village or incorporated town clerk, and one member of the city council or board of trustees, that member being designated who has served the greatest number of years as member of the city council or board of trustees, of whom the mayor or president of the board of trustees shall be chairman,"

Article 10, Section 9, Subparagraph 3, provides:

"In the event that any member of the electoral board is a candidate for the office with relation to which the objector's petition is filed, he shall not act as a member of the electoral board in that instance, and his place shall be filled as follows".

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14. Your objectors further show that Theofil T. Bulat, president of said Village of Lyons, Cook County, is a candidate for the office of President of said Village of Lyons, with relation to which this objector's petition is filed and the said Theofil T. Bulat is not eligible to act as a member and as chairman of the electoral board and Article 10, Section 5, Subparagraph 3 (d) of said Election Code provides that in such event the County Judge shall act as Chairman of the Municipal Officers Electoral Board.

Wherefore your objectors pray that Edmund K. Jarecki, Judge of the County Court of Cook County and Chairman of the Electoral Board require Ralph E. White, the Village Clerk of the Village of Lyons, to furnish evidence of candidacy of Theofil T. Bulat, the present President of the Village of Lyons for reelection to said office.

Wherefore your objectors pray that the names of

| | | |
|---|---|---|
| | Lyman F. Martin | Village President |
| | Cecil Grgurich | Village Clerk |
| 284 | Joseph Cerny | Village Trustee |
| | Henry J. Metz | Village Trustee |
| | John F. Gazarek | Village Trustee |
| | Frank J. Kucera | Police Magistrate |

be stricken as nominees for the offices in the Village of Lyons set opposite to their respective names as above, and the names of said

| | |
|---|---|
| Lyman F. Martin | Village President |
| Cecil Grgurich | Village Clerk |
| Joseph Cerny | Village Trustee |
| Henry J. Metz | Village Trustee |
| John F. Gazarek | Village Trustee |
| Frank J. Kucera | Police Magistrate |

be not printed on the ballot for the election of said offices in the said Village of Lyons at the election to be held on the 17th day of April, A. D. 1945.

Karl Schimmelpfennig (Signed)
*Objector*

O. H. Felton (Signed)
*Objector*

Paul W. Brust (Signed)
*Attorney for Objectors.*

285 Exhibit B to Complaint in 45 C 2198:

*Clerk's Office*
VILLAGE OF LYONS
Cook County, Illinois

BLEED THROUGH

Ralph E. White
Village Clerk
Hon. Edmund K. Jarecki March 17, 1945
County Judge
Cook County, Ill.
Dear sir:

Objections to the petition for certificates of nomination of the Regular Peoples Party were filed with me today, March 17, 1945, at 5:30 P. M. by Karl Schimmelpfennig and O. H. Felton, both residents of the Village of Lyons and legal and registered voters thereof.

As required by law I am herewith enclosing the original certificates of nomination filed by the Regular Peoples Party on the 13th day of March, 1945, and the original and a copy of the objectors' petition filed by Karl Schimmelpfennig and O. H. Felton.

I have been advised by our Village Attorney, Mr. Joseph I. Bulger that I must send these papers to you immediately by registered mail and I should notify you who the other two members of the Municipal Officers Electoral Board are. They are:

Ralph E. White 4130 Maple Avenue Lyons, Ill.
Louis Hoffman 4140 Anna Street Lyons, Ill.

286 Mr. Hoffman is the oldest sitting trustee in the number of years of service on the Lyons Village Board.

Theofil T. Bulat, President of the Village Board of Trustees of the Village of Lyons, cannot act as Chairman of the Municipal Officers Electoral Board because he is a candidate for re-election, in which event the statute provides that you as County Judge shall act as Chairman of said Board.

Will you therefore please advise and notify Mr. Louis Hoffman at the above address and myself as Village Clerk as to when the hearing will be held on the objections to the certificate of nomination filed with me as above stated. I further understand from our Village Attorney that this hearing must be held not less than three nor more than five days after the receipt by you of the certificates of nomination and the objectors' Petition.

Yours very truly,
Ralph E. White (Signed)
*Village Clerk.*

Exhibit C to Complaint in 45 C 2198:

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CALL.

To

Edmund K. Jarecki, County Judge and Louis Hoffman, Trustee of the Village of Lyons, Illinois, and Ralph E. White, Village Clerk of the Village of Lyons, Illinois, constituting the Municipal Officers Electoral Board of the Village of Lyons:

Karl Schimmelphennig, Objector
O. H. Felton, Objector,

287 and the following candidates for the offices indicated:
Lyman F. Martin, Village President
Cecil Grgurich, Village Clerk
Joseph Cerny, Village Trustee
Henry J. Metz, Village Trustee
John F. Gazarek, Village Trustee
Frank J. Kucera, Police Magistrate

You are hereby notified that the above designated Municipal Officers Electoral Board is required by law to pass upon objections to the nominating petition of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois.

You are further notified that the above designated Municipal Officers Electoral Board of the Village of Lyons shall meet on Friday, the 23rd day of March, 1945 at the hour of 10:00 A. M. in Room 603 in the County Court House, commonly referred to as the County Building, located at the southwest corner of West Randolph and North Clark Streets in Chicago, Illinois, for the purpose of hearing and passing upon the nominating petition of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois, and that a call has been and is hereby made by the said above designated Municipal Officers Electoral Board for said meeting to be held at the time and place and for the purposes as aforesaid.

Dated this Nineteenth Day of March, 1945.

Edmund K. Jarecki (Signed)
*County Judge of Cook County and Ex-Officio Chairman of the Municipal Officers Electoral Board of the Village of Lyons.*

288 Exhibits D1, D2, D3 to Complaint in 45 C 2198:
Lyman F. Martin's statement of candidacy.
Cecil Grgurich's statement of candidacy.

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Joseph Cerny's statement of candidacy.
Henry J. Metz' statement of candidacy.
John F. Gazarek's statement of candidacy.
Frank J. Kucera's statement of candidacy.

Exhibit D4 to Complaint in 45 C 2198:

CERTIFICATE OF NOMINATION.

To Ralph E. White, Clerk of the Village of Lyons, County of Cook and State of Illinois:

This is to certify that a caucus of qualified voters of the Regular Peoples Party aforesaid held at Sokol Hall, on the 8th day of March A. D. 1945 for the purpose of nominating candidates for officers to be voted for at the Election to be held Tuesday, the 17th day of April A. D. 1945, the following named persons, resident of said Village, were nominated for the offices set opposite their respective names, all of said candidates representing the Regular Peoples political party.

| Office to Be Filled | Name of Candidate | Residence |
|---|---|---|
| Village President | Lyman F. Martin | 8024 White Avenue Lyons, Illinois |
| Village Clerk | Cecil Grgurich | 8129 White Avenue Lyons, Illinois |
| Village Trustee | Joseph Cerny | 7915 Forty-Fifth Place Lyons, Illinois |
| Village Trustee | Henry J. Metz | 8136 Ogden Avenue Lyons, Illinois |
| Village Trustee | John F. Gazarek | 8737 Ogden Avenue Lyons, Illinois |
| Police Magistrate | Frank J. Kucera | 4333 Joliet Avenue Lyons, Illinois |

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Paul O. Stednitz,
of 8019 White Ave., Lyons, Illinois,
*Presiding Officer.*

Lester W. Schifelbein,
of 7842 W. 42nd Place, Lyons, Illinois,
*Secretary.*

Personally appeared before me, this Thirteenth day of March, A. D. 1945, the persons whose names are subscribed to the above certificate, who, being duly sworn, on their oath say that the same is true to the best of their knowledge and belief.

William H. Smith, (Signed)
*Notary Public.*

My Commission Expires Nov. 7, 1945.

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We also certify that at the last preceding general election, in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area, the Regular Peoples party polled more than 5 per cent of the entire vote cast in said Village of Lyons at said election.

Paul O. Stednitz,
of 8019 White Ave., Lyons, Illinois,
*Presiding Officer.*
Lester W. Schifelbein
of 7842 W. 42nd Place, Lyons, Illinois,
*Secretary.*

290 Exhibits E1, E2 and E3 to Complaint in 45 C 2198:
Theofil T. Bulat's statement of candidacy.
Joseph F. Janda's statement of candidacy.
Matt Jadro's and James Landa's statement of candidacy.
Herman Toepper's statement of candidacy.
James Cihlar's statement of candidacy.
Exhibit E4 to Complaint in 45 C 2198:

CERTIFICATE OF NOMINATION.

To Ralph E. White, Clerk of the Village of Lyons, County of Cook and State of Illinois:

This is to certify that a caucus of qualified voters of the Village of Lyons aforesaid held at 7801 W. Ogden Ave., Lyons, Illinois, on the 12th day of March, A. D. 1945 for the purpose of nominating candidates for officers to be voted for at the Election to be held Tuesday, the 17th day of April A. D. 1945 the following named persons, resident of said Village, were nominated for the offices set opposite their respective names, all of said candidates representing the Regular Progressive Citizens Ticket political party.

| Office to be Filled | Name of Candidate | Residence |
|---|---|---|
| Village President | Theofil T. Bulat | 7904 West 45th Place, Lyons, Illinois |
| Village Clerk | Joseph F. Janda | 8312 West 44th Place, Lyons, Illinois |
| Village Trustee | Matt Jadro | 7832 West 42nd Place Lyons, Illinois |
| Village Trustee | James Landa | 3933 Gage Avenue, Lyons, Illinois |

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Village Trustee Herman J. Toepper 3951 Prescott Ave., Lyons, Illinois

Police Magistrate James A. Cihlar 3907 Custer Avenue, Lyons, Illinois

291 Fred J. Blafke,
of Lyons, Illinois,
*Presiding Officer.*

Mildred Soukup,
of Lyons, Illinois,
*Secretary.*

Personally appeared before me, this 13th day of March A. D. 1945, the persons whose names are subscribed to the above certificate, who, being duly sworn, on their oaths say that the same is true to the best of their knowledge and belief.

Joseph I. Bulger (Signed)
*Notary Public.*

We also certify that the Regular Progressive Citizens Ticket was not an established political party, at the last preceding general election, in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.

Fred J. Blafke,
of Lyons, Illinois,
*Presiding Officer.*

Mildred Soukup,
of Lyons, Illinois,
*Secretary.*

292 Letter of Edmund K. Jarecki, County Judge, to Ralph E. White, Village Clerk:

(Letterhead of)

COUNTY COURT OF COOK COUNTY ILLINOIS

Chambers of

JUDGE EDMUND K. JARECKI

Chicago

(Seal)

March
Twenty-third
1 9 4 5

POOR COPY

To: Ralph E. White,
Village Clerk,
Village Hall,
Lyons, Illinois.

For expenses incurred in mailing "Notices of Call" in re. Objections of Karl Schimmelphennig and O. H. Felton to Certificate of Nomination of "Regular Peoples' Party."

"Notices of Call"— "Special Delivery" —
"Return Receipt Requested"
(27 cents each)
$2.70

Edmund K. Jarecki,
*County Judge of Cook County and Ex-Officio Chairman of Municipal Officers' Electoral Board.*

293 Letter of County Judge Jarecki to Ralph E. White, Village Clerk:

(Letterhead of)
COUNTY COURT OF COOK COUNTY ILLINOIS
*Chambers of . .*
JUDGE EDMUND K. JARECKI
Chicago

(Seal)

March
Twenty-third
1 9 4 5

Hon. Ralph E. White,
Village Clerk,
Village Hall,
4130 Maple Avenue,
Lyons, Illinois.

Dear Sir:

I am enclosing, herewith, a bill for expenses incurred by the Electoral Board in a hearing on the objections of Karl Schimmelphennig to the Certificate of Nomination of the "Regular Peoples' Party."

Kindly make your check payable to John S. Rusch, Chief Clerk of the Board of Election Commissioners, inasmuch as the postage was advanced by that office.

Very truly yours,
Edmund K. Jarecki,
*County Judge.*
By John P. Daly.

JPD.MC
Encl.

BLEED THROUGH

294 Letter of Ralph E. White to Peoples party:

EXHIBIT F.

Phone Lyons 7027
Ralph E. White
Clerk
Hattie Bredfield
Treasurer
Emily Herber
Collector

VILLAGE OF LYONS
Lyons, Illinois
THEOFIL T. BULAT
*President*

Joseph Cerny
Louis J. Hoffman
Anton Palansky
Walter W. Potokar
John Subat
Herman Toepper
Trustees

March 19, 1945

Regular Peoples Party
c/o Lyman Martin,
8024 White Avenue,
Lyons, Illinois.

Gentlemen:

I hand you herewith, by messenger, a copy of a petition the original of which is filed in the County Court, pertaining to objections filed by O. H. Felton and Karl Schimmelpfennig to the Certificate of Nomination of "Regular Peoples Party."

The petition is self explanatory.

Very truly yours
Ralph E. White (Signed)
Ralph E. White,
*Village Clerk.*

REW:ENCL.

295 Exhibit G to Complaint:

WRITTEN DEMAND.

To the Honorable Edmund K. Jarecki,
County Judge
County Building
Chicago 2, Ill.

*In re:* Objections, Municipal Candidates, Village of Lyons.

Dear Judge Jarecki:

Your so-called "Call" for a meeting of a "Municipal Officers Electoral Board of the Village of Lyons" by yourself as ex-officio Chairman thereof, has been received by each of the undersigned.

This is to notify you that the undersigned, and each of them, respectfully demand that you do not preside at such hearing; that you do not hold any hearing of the said

POOR COPY

Board, and particularly, that you forthwith return all papers and documents received by you as nominal Chairman of the said Electoral Board from the Village Clerk of the Village of Lyons back to the said Village Clerk, without any consideration thereof either by you or by anyone else; and that you return the said documents for the following reasons:

A. Under Section 10-8 of Chapter 46 of the Revised Statutes of Illinois, the Village Clerk of the Village of Lyons was required (as a jurisdictional matter, before any hearing by you as Chairman of the said Electoral Board) to send to each of the undersigned as "the candidates whose Certificates of Nomination or nominating papers are objected to" by registered mail, a copy of the said 296 Objections; and the undersigned hereby notify you that the said Clerk entirely failed and neglected to comply with the statute in that regard and failed to send any copy of the said Objections addressed to any of the undersigned, as required by law; by reason whereof, you have no jurisdiction or authority to act as Chairman of the said Electoral Board; and further, by reason whereof, any attempted hearing or action by you would constitute a usurpation by you without any authority of law.

B. You are hereby notified that the entire purpose, and the entire grounds of the said Objections so transmitted to you, is based on the contention in the said Objections that the population of the Village of Lyons is over 5,000 and that therefore (according to the argumentative allegations of the Objections) nominations like these of the undersigned for the Village of Lyons could not be made in accordance with the provisions of Article 10, of Chapter 46 of the Illinois Revised Statutes. You are hereby notified that in accordance with Section 1-9 of the Cities and Villages Act of the State of Illinois, Chapter 24, Illinois Revised Statutes, it is provided, among other things, that the number of inhabitants of any municipality shall be determined by the latest census taken by authority of the United States or of this State or of the particular municipality; that the latest census so taken was and is the Federal census of 1940, which census shows a population for the Village of Lyons of less than 5,000, being, to wit, and that no census of the said Village of Lyons since the 1940 census has been taken either by the State of Illinois or the Village of Lyons. You are further notified that the said statute

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last mentioned further provides:
"And the several courts in this State shall take judicial notice of the population of any municipality as the population appears from the latest Federal, State or municipality census so taken."

297 You are further notified that by virtue of the matters set forth in the paragraph last above, and particularly by virtue of the requirement by you as Judge of the County Court of Cook County, you are required to take notice that the population of the Village of Lyons is less than 5,000; that therefore the provisions of Article 10, Chapter 46 of the Revised Statutes of Illinois, concerning elections, does apply to the Certificates of Nomination and nomination papers of the undersigned, and that therefore there is no basis or ground whatsoever for the said Objections submitted to you and to the Electoral Board of which you purport to be a member as Chairman thereof.

By reason of the foregoing matters, we respectfully notify you that you have no jurisdiction or authority to hold any hearing under the said "Call" above described, and that, therefore, you should hold no such hearing, but should forthwith return all such papers now in your possession, concerning the said objections, to the said Village Clerk as above demanded.

Respectfully submitted,
Lyman F. Martin,
Cecil Grgurich,
Joseph Cerny,
Henry J. Metz,
Joseph F. Gazarek,
Frank J. Kucera,
By Urban A. Lavery (Signed)
Urban A. Lavery,
*Their Attorney.*

298 Received copy of the foregoing Demand this 21st day of March, 1945.

Judge Ed. K. Jarecki (Signed)
By L. T. Wolhsweig.
3:20 P. M.

Exhibits H-1 to H-7 to Complaint:

POOR COPY

State of Illinois }
County of Cook } ss.

BEFORE THE

VILLAGE ELECTORAL BOARD OF THE VILLAGE OF LYONS

In the Matter of
The People's Regular Party of said Village } Election of April, 1945

Present:
Hon. Edmund K. Jarecki, Chairman;
Mr. Ralph E. White,
Mr. Louis Hoffman, Members;
Mr. John Daly, Asst. Atty. for the Election Commissioner's Office.

TRANSCRIPT OF TESTIMONY.

The following is a transcript of testimony taken and proceedings had in the above named matter at 600 County Building, Chicago, Illinois, on the 23rd day of March, A. D. 1945, at 10 o'clock A.M.

Present:
Mr. Urban A. Lavery, and
Mr. Frank J. Lexa,
Representing the Regular People's Party.

---

299 The Chairman: The objection of Karl Schimmelpfennig to the certificate of nomination of the Regular People's Party.

Are the Clerk and the other Officers here from that district? Mr. White and Mr. Hoffman are from Lyons.

Mr. White: Yes, sir.

The Chairman: Sit down at the table over here with me, will you, please?

They are objecting to what?

Mr. Daly: The Regular People's Party.

The Chairman: They are objecting to the petition on the ground they have too many names?

Mr. Daly: No. They object to the petition on the ground the Regular People's Party had no right to caucus in the Village of Lyons.

The Chairman: Why not?

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Mr. Daly: It is a village over 5,000.

The Chairman: It is a village over 5,000. What is the federal census?

Mr. Daly: 4,960 as of 1940. That is the last regular census.

The Chairman: That is all we are governed by?

Mr. Daly: Yes.

The Chairman: In the statutory proceedings we go by the federal census. So I am for putting the names on and let them run.

Mr. Daly: I want to point out this other party in the Village of Lyons they have also caucused.

The Chairman: They have a right to. They have less than 5,000 according to the federal census of 1940.
300 That is the thing that governs. They may jump up or jump down, but the census governs, the federal census, you may have 6,500 there.

Mr. White: There is the total registration:

The Chairman: That is right. I am not saying it isn't. According to the statute I am governed by the federal census. That is the thing that determines it for the next ten years. They proceed on that basis. I am for letting the names on and let them run on the ballot. Let them run and let the people decide for or against them and putting it to a vote.

Mr. White: I would like to hear these objections.

The Chairman: Where are they? I am ready to act. I am not going to sit here all day for them.

Mr. Lavery: May I make a suggestion, Your Honor? I represent the people, and I object to this. There is something that just came up this morning. I think this Chairman ought to know it. The notice here purporting to be sent out by Mr. White as Village Clerk, and I have only learned this morning that for a year and a half Mr. White has resigned as Village Clerk. For the last year and a half he has been Chief of Police of the Village. He has taken his office as Chief of Police and has been sworn in as Chief of Police. Therefore, that vitiates any other proceedings here. I have only learned that this morning. I think Mr. White will admit the facts.

The Chairman: I will tell you, that is another issue. There is only one issue before us, and that is the way we are going. If the federal census determines that village to be below 5,000, that governs.

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Mr. Lavery: There is no question about that.

301 The Court: I am for putting the names on the ballot. Are you for or against it?

Mr. Hoffman: If the statute says so.

Mr. White: Where is that census gotten from?

Mr. Daly: That is the federal census that was gotten from the Public Service Department of the Chicago Tribune.

Mr. Lexa: Or published in the Rand & McNally Atlas. That is the official census. It is a 1944 Atlas.

The Chairman: It is generally published all over.

Mr. Lavery: It is common knowledge.

Mr. Lexa: The law says you must take judicial notice.

The Chairman: This is not a court. This is an electoral board. That is why I am not sitting on the bench. The Court has to take judicial notice, and I am taking judicial notices. The Clerk tells me they got 6,200. They may have 6,000 in there.

Mr. White: According to the OPA statistics there is approximately 6,200, I believe.

Mr. Lavery: Let me get the section of the Cities and Villages Act, Your Honor.

Here is the section of the statute of the Cities and Villages Act.

The Chairman: We will take this right out (Reading): "Whenever in this Act any provision thereof is based upon the number of inhabitants, (the number of inhabitants) of the city or village shall be determined by reference to the latest census taken by authority of the United States or of this state, or of such city or village; and it shall be the duty of the Secretary of State, upon the publication of any State or United States census, to

302 certify to each city or village the number of inhabitants, as shown by such census. Any city or village may, by ordinance, provide for the taking of a census of the population thereof, in order to determine the number of such population for any and all purposes of this Act. And the several courts in this state shall take judicial notice of the population of any city or village, as the same may appear from the latest Federal, State, City or Village census so taken."

Mr. White: State or municipality, that is the way I read it.

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The Chairman: This is technical. This is merely something to deprive a man of an opportunity to run or the public to express their wishes. I am against it. I am for the names being published.

What is the finding of the Board?

Mr. White: No.

Mr. Hoffman: I favor voting no.

The Chairman: What do you mean, no?

Mr. White: To be stricken from the ballot.

The Chairman: I am against it, two of the men of the village voting to keep these people off the ballot. Let it be so recorded. You have the record to that effect.

What is the next case?

Mr. Lavery: I didn't hear the vote of Mr. Hoffman.

Mr. Hoffman: No was the vote.

The Chairman: It is purely political. You can see these men are in the office there trying to keep the men off the ballot.

303 Mr. White: I am not interested in who is running.

The Chairman: That is all.

Mr. Lavery: If the Commissioner please, may I make a point?

The Chairman: Yes.

Mr. Lavery: I again raise the point that Mr. White is not the Village Clerk.

The Chairman: That is outside of the point in this case. Raise it in the mandamus proceedings. If you declare the Board is illegal that determines the whole question.

Mr. Lavery: I would like this, Mr. Chairman. I won't take but a moment. I would like the Chairman of this Board to suspend issuing the order here for a few days to give us an opportunity to try out this question. I think we are entitled to that.

The Chairman: When is that matter coming up there?

Mr. Lavery: It will come up Tuesday. It will not in any way affect the pending of this matter.

The Chairman: I will hold it until Tuesday noon.

(Which was all of the proceedings had in the above entitled matter.)

Amendment To Petition for Mandamus in 41 C 2198 filed March 26, 1945:

Come now relators and petitioners herein by Urban A. Lavery, their attorney, and after leave of court being granted therefor, file herein this Amendment to the Petition

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for Mandamus heretofore filed on, to wit, March 22, 1945.

Relators and Petitioners amend their said petition for Mandamus by adding thereto, at the foot of paragraph
304 numbered XVI thereof (and before the prayer for relief, etc.) the following additional paragraphs as hereinafter numbered:

XVII. Relators and Petitioners show that one Ralph E. White signed the document dated March 17, 1945, addressed to "Honorable Edmund K. Jarecki, County Judge, Cook County, Illinois" (copy of which document is attached to the original Petition for Mandamus herein and made a part thereof as Exhibit B), and the said Ralph E. White signed the said document as, Yours very truly, Ralph E. White, Village Clerk, as shown by the said document itself; that the said Ralph E. White, purporting to act as such Village Clerk of the Village of Lyons, in and by the said document (Exhibit B), purported to certify officially his own name (by virtue of his purported claim to be Village Clerk) as one of the members of the so-called "Municipal Officers Electoral Board."

Relators and petitioners show and charge that the said Ralph E. White, at the time of his signing and issuing and mailing and forwarding the said document dated March 17, 1945, above described (Exhibit B) was not and is not now the Village Clerk of the Village of Lyons, Cook County, Illinois; but on the contrary relators and petitioners show that for more than a year last past and at the time the said Ralph E. White signed the said document last mentioned, and at the time of the filing of the Petition for Mandamus herein, and at the time of the filing of this amendment thereto, the Village Clerk of the Village of Lyons, was one Joseph Janda, residing at 8312 West 44th Place, in the said Village of Lyons, and therefore relators and petitioners charge:

305 (a) That the actions and doings of the said Ralph E. White in the premises, as recited in this paragraph numbered XVII, were false and malicious and illegal, for the reason that said Ralph E. White was not, at the time of his signing of such document, and is not now the Village Clerk of the Village of Lyons;

(b) That the actions and doings of the said Ralph E. White in the premises were contrary to law and were a violation of the Criminal Code of the State of Illinois and constitute a crime against the people of the State of Illi-

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nois, in violation of Chapter 38, Sec. 260, Illinois Revised Statutes, which section of the Criminal Code provides as follows:

"Sec. 260. *Falsely assuming an office.* Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy sheriff, coroner, constable, police officer, watchman, or *other officer,* and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be confined in the county jail not exceeding one year or fined not exceeding $500."

And relators and petitioners show that the acts and doings of the said Ralph E. White in the premises, as above recited, constituted and constitute a violation of law and of that particular statute in two respects, namely: first, that Ralph E. White "assumed and pretended" to be an officer of the State of Illinois, to-wit, Village Clerk of the said Village of Lyons when he was not such Village Clerk; second, that said Ralph E. White required another person, to-wit, the Honorable Edmund K. Jarecki, defendant herein, to "aid and assist him in a matter pertaining to the duty" of the office of Village Clerk of the Village of Lyons when he, the said Ralph E. White, was not Clerk of the said Village of Lyons. And by reason of the matters and things alleged in this paragraph numbered XVII, the defendant, the Honorable Edmund K. Jarecki, could not lawfully act as Chairman of the said Municipal Electoral Board and could not accept or receive any papers or documents purporting to have been sent to and filed with him as Chairman of the said Electoral Board, as recited in and purports to have been done in the said document dated March 17, 1945 (Exhibit B), purporting to have been signed by the said Ralph E. White as Village Clerk; and therefore because of the particular matters and things recited and alleged in this paragraph XVII, the said defendant was and is without authority or jurisdiction in the premises whatsoever.

306

XVIII. Relators and petitioners show that on, to-wit, the 23rd day of March, 1945, the defendant, the Honorable Edmund K. Jarecki, notwithstanding the matters and things recited in paragraph numbered XVII above pretending and purporting to act as Chairman of the said Municipal Officers Electoral Board, called the said Board into session in the main courtroom of the County Judge of

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Cook County, in the County Building, in the City of Chicago, and then and there purported to organize the said Electoral Board, at about 10:30 o'clock A.M of the said day, in accordance with the provisions of Section 10-9 of Chapter 46 of the Revised Statutes of the State of Illinois, and then and there pretended to proceed to a hearing upon the Objections purported to have been forwarded to him as such Chairman, a copy of said objections being at-
307 tached to the original Petition for Mandamus herein as Exhibit A and made a part of the said original petition; that at the said pretended hearing of the said Electoral Board petitioners and relators were present with their counsel, Messrs. Urban A. Lavery and Frank J. Lexa, and the said relators and petitioners thereupon and at the time last mentioned, and in the presence of the defendant as such Chairman and in the presence of the said Ralph E. White and Louis Hoffman, purporting to act as the two other members of the said Electoral Board, challenged the right of the said Ralph E. White to do any acts or things as the said Village Clerk of the said Village of Lyons, for the reason (as there and then stated by relators and petitioners, by their counsel) that the said Ralph E. White was not then and there the duly appointed or acting Village Clerk of the said Village of Lyons.

And relators and petitioners show that notwithstanding such challenge of authority and such want of authority of the said Ralph White in the premises, nevertheless the said defendant, The Honorable Edmund K. Jarecki, proceeded to go forward with a pretended and purported hearing by the said Municipal Officers Electoral Board on the said Objections already mentioned and described; and therefore, because of the matters and things recited and alleged in this paragraph XVIII, the said defendant was and is without authority or jurisdiction in the premises whatsoever.

XIX. Relators and petitioners attach to this amendment (as Exhibit H and make a part of the original Petition for Mandamus filed herein) a true and correct steno-
graphic record before the so-called Municipal Officers
308 Electoral Board of which the defendant purported to act as Chairman on, to-wit, March 23, 1945, the said Transcript being incorporated in the Petition for Mandamus filed herein and made a part hereof, for the information of this court.

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Respectfully submitted,
Lyman F. Martin,
Cecil Grgurich,
Joseph Cerny,
Henry J. Metz,
John F. Gazarek,
Frank J. Kucera,
By Urban A. Lavery (Signed)
Urban A. Lavery,
*Their Attorney.*

(Signed) Urban A. Lavery,
*Attorney for Petitioners and Relators.*

State of Illinois }
County of Cook } ss.

Lyman F. Martin, being first duly sworn, on oath deposes and says that he is one of the relators and petitioners in the above entitled cause and that as such he is authorized to make this affidavit on their behalf; that he has read the above and foregoing Amendment to the Petition for Mandamus heretofore filed herein; that he knows the contents thereof, and that the same is true in substance and in fact.

(Signed) Lyman F. Martin.

Subscribed and sworn to before me a notary public this 26th day of March, 1945.

(Signed) Marcus J. Golden,
*Notary Public.*

(Seal)

309 Notice in case No. 45 C 2198 addressed to W. J. Tuohy, state's attorney, over the signature of Urban A. Lavery, attorney for relators, receipted for by W. J. Tuohy, with copy of amendment to petition for mandamus on March 26, 1945, stating that on March 26, 1945, at the opening of court, counsel would appear before Judge Fisher and present an amendment to the petition for mandamus, and at the same time ask the court for an emergency hearing so that an order may be entered prior to noon, Tuesday, March 27, 1945.

DEFENDANTS' EXHIBIT "B."

Exhibit B, proceedings before Electoral Board on March 27, 1945:

Transcript of proceedings had in the chambers of the Honorable Edmund K. Jarecki, Judge of the County

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Court, on the 27th day of March, A. D. 1945, at the hour of 11 o'clock A. M.

Present:

Mr. Urban A. Lavery,
Mr. Frank J. Lexa,
representing the Regular People's Party.
Mr. Joseph I. Bulger,
representing the Electoral Board.
Mr. Paul W. Brust,
representing the Objectors.
Mr. John Daly,
Asst. Atty. for Election Commissioners.

The Court: Now, what have I to account for the pleasure of this company here?

310 Mr. Bulger: Your Honor, I want first to introduce myself. My name is Joseph I. Bulger. I am attorney for the Village of Lyons.

The Court: Yes.

Mr. Bulger: I received a letter from Mr. White and Mr. Hoffman on March 23rd asking me to be attorney to counsel and advise them in the matter.

The Court: Yes.

Mr. Bulger: I did not have an opportunity to counsel and advise them on Friday the 23rd because I was informed that the matter was to be taken up about 10:30 and when I got here at twenty minutes after ten the matter had been disposed of.

The Court: Yes.

Mr. Bulger: I understand from the record—Mr. Lavery has very kindly given me a copy of the transcript of what took place here and the Board meeting and decided on the problem that was before them, and on Mr. Lavery's motion the matter was suspended until this morning.

Now, I think from that point on Your Honor can best advise us what he intends to do, so that I may give them my advice as to what they might do.

The Court: Well, I have already done that yesterday. (To Mr. Daly) Didn't you take up my letter yet?

Mr. Daly: It was sent out yesterday afternoon.

The Court: Have you a copy of it?

Mr. Daly: I have a copy of it downstairs. This is a copy of the order. I will get it for you.

The Court: You know what happened before Judge

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Fisher.

311 Mr. Bulger: Yes, I do.

The Court: Well, in compliance with the order of Judge Fisher of the mandamus proceedings, I simply sent them back and said the Electoral Board was improperly organized and therefore it was completely dissolved, and I returned the papers to them. That's all I can do.

Mr. Bulger: May I see that, if the Court please?

The Court: Yes, this is a copy of it.

Mr. Bulger: May I have this made a part of this record today?

The Court: Yes, sure you can make a copy; in fact, I thought that was to be included.

Mr. Daly: That's right.

The Court: But it did not get there.

Mr. Daly: Did you receive it, Mr. White?

Mr. White: I have received nothing, no, sir.

The Court: Is a copy of that order in there?

Mr. Daly: Copies were put in the mail, and also the petition—

Mr. Bulger: Is Your Honor, based on this order, refusing to act as Chairman?

The Court: Certainly.

Mr. Bulger: May we use your court room to report our proceedings?

The Court: There is no further proceeding. There is nothing to be had here.

Mr. Bulger: Well, I am advising the members of this Electoral Board of their rights, duties and obligations with reference to those objections, that they are legally constituted and their finding in this matter is binding on

312 the parties and they should meet this morning, and I have prepared some documents which they will pass if they so see fit, and send certified copies of these documents, together with the certificates of nomination against whom the petition for objections has been filed, back to the people who filed them.

The Court: Yes. Listen, I haven't the papers here, I sent them back. Now, the Board can meet wherever they please. You can advise them to do what they want. I have terminated my relationship with that Board.

I agree with the judge that that Board, if it were to be constituted, would have had to include somebody else beside Mr. White there.

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I was advised by the people of that district that the Board, where the Clerk was on there, Mr. White and Mr. Hoffman—I notified them I think that Board is not properly constituted, and the Judge even suggested, sent down Mr. Lavery here, that, would I think it advisable to call another Board. I said no, because I think it was too late now, I had to do it within a certain specific time and the statute governs in these cases, and I have no right to decide who constitutes the Board, so I am just following his instructions, and the Board is dissolved and that settles it.

Mr. Bulger: So we won't embarrass Your Honor, we are going to repair to the court room and sit at your table, the counsel table and continue our proceedings.

The Court: There's a question whether you may do so.

Now, you know I can have a hearing in my court when
313 I am presiding, but nobody can walk in and sit in my court. That's another thing. I can forbid you to do it.

I have taken the documents and forwarded them back in compliance with the order.

Mr. Bulger: Does Your Honor refuse to act on this Board?

Mr. Daly: There is no Board in existence.

The Court: Counsel, what did you interpret my actions to mean when I returned the papers to you and said in compliance with that order—

Mr. Bulger: I don't believe you have the power to dissolve this Board. I think the Board has acted. The Board is here today to make a finding.

The Court: I gave you the documents, and you construe what they mean.

Mr. Bulger: Let the record show we will go and meet some place else.

(Which were all the proceedings had on the hearing before the Honorable Judge Jarecki.)

Judge in mandamus entered on March 26, 1945 in the Circuit Court of Cook County in *People ex rel Lyman F. Martin, et al.* v. *The Honorable Edmund K. Jarecki, etc.*, No. 45-C 2198:

JUDGMENT IN MANDAMUS.

This matter coming on to be heard in open court before the undersigned as one of the judges of the Circuit Court of Cook County; and the plaintiffs being represented in

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court by Urban A. Lavery, their attorney; and the defendant being represented in court by his attorney, William J. Tuohy, state's attorney of Cook County, by
314 Gordon Nash, assistant state's attorney, and having duly entered their appearance herein by said attorney; and this matter being submitted to the Court on the merits by agreement of the plaintiffs by their said attorney and the defendant by his said attorney; and the defendant having duly entered his oral motion *ore tenus* to dismiss the petition for mandamus as amended; and the Court having considered the petition for mandamus as amended and the said motion of the defendants above mentioned, and having heard arguments of counsel for both plaintiffs and defendant in the premises doth find the issues for the plaintiffs and against the defendant upon the defendant's said motion; and the defendant having failed to plead further in the premises;

The Court now finds that the Municipal Electoral Board for the Village of Lyons, mentioned and described in the said Petition for Mandamus as amended was illegally constituted; and was particularly illegally constituted for the reason that one Ralph E. White, purporting to act as a member of said Electoral Board by virtue of his being Village Clerk of the Village of Lyons, was not in truth and in fact Clerk of the Village of Lyons at the time of the convening and hearing of said Electoral Board and therefore had no power or authority to act as a member of said Electoral Board.

WHEREFORE the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons is ***hereby directed and ordered*** to enter a finding in the proceedings of the said Board, to the effect that
315 the said Electoral Board as convened was not properly and lawfully constituted under the law, and that the said Electoral Board, therefore, should be dissolved; and the said defendant is further ORDERED AND DIRECTED, forthwith, to return all certificates of nomination, or nomination papers and other documents now in his possession as such purported Chairman of said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the

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said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve said purported Electoral Board.

(Signed) Harry M. Fisher
*Judge of the Circuit Court of Cook County.*

Exhibit B-1, Transcript of Proceedings had on March 27, 1945 before the Municipal Officers Electoral Board of the Village of Lyons In re Matter of Objections to the Certificate of Nomination of the Regular People's Party for the Village Offices of President of the Board of Trustees, Village Clerk, three Trustees and Police Magistrate for the Village of Lyons, Cook County, Illinois:

Transcript of the proceedings had in the above named matter in Room 233, County Building, Chicago, Illinois, on March 27, 1945, at the hour of 11:15 o'clock A. M.

Present:

Mr. Joseph I. Bulger,
Attorney for the Electoral Board.
Mr. Paul W. Brust,
Attorney for Objectors.
316 Mr. Ralph E. White,
Village Clerk and member of the Municipal Electoral Board, Village of Lyons.
Mr. Louis Hoffman,
Village Trustee and member of the Municipal Electoral Board of the Village of Lyons.

Mr. Bulger: Let the record show that Judge Jarecki forbade us using his chambers or his court-room, and that the Municipal Officers Electoral Board of the Village of Lyons met in the County Clerk's office on the second floor of the County Court House in Chicago, at 11:15 A. M.

Louis Hoffman, Village trustee and member of the Municipal Officers Electoral Board of the Village of Lyons, and Ralph E. White, Village Clerk and member of the Municipal Officers Electoral Board called the meeting to order, and these two gentlemen proceeded to carry on the business of the Electoral Board in the matter of the Objections to Certificate of Nomination of the Regular People's Party for the Village offices of President of the Board of Trustees, Village Clerk, three trustees, and Police Magistrate for the Village of Lyons, Cook County, Illinois, and that the persons whose names appear on such Certificate of Nomination are as follows:

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Lyman F. Martin,
Regular Peoples Party
for office of Village
President
Cecil Grgurich,
For Village Clerk,
Joseph Cerny,
Henry J. Metz and
John F. Gazarek,
Village Trustee, and
Frank J. Kucera,
Police Magistrate.

That the said Electoral Board composed of Mr. Hoffman and Mr. White, on the refusal of the Honorable Edmund K. Jarecki, Chairman of said Board to act in
317 the said matter, proceeded to carry on the functions of the said matter, proceeded to carry on the functions of the said Board according to the statutes as in that case made and provided.

I, as your attorney wish to give you my advice and counsel regarding your duties, obligations and responsibilities with reference to this matter. It is my opinion that this Board was legally constituted according to law and that it convened lawfully and that its findings are lawful.

I have checked the proceedings and when Mr. White referred to me the matter of an Objection which was filed against the Certificates of Nomination of the Regular People's Party, I advised him that he should proceed immediately by registered mail to send all of these papers to the Honorable Edmund K. Jarecki who, under the law would be the Chairman of the said Municipal Officers Electoral Board by reason of the fact that the President of the Board of Trustees of the Village of Lyons was a candidate, and therefore ineligible to vote or to act as a member of the Municipal Electoral Board.

It is to be noticed, and the record so shows, that an inspection of the Certificate of Nomination further shows on its face that the said certificate was filed and given and certified to Ralph E. White, Village Clerk of the Village of Lyons on March 13, 1945; that Ralph E. White, as Village Clerk, gave the party presenting said certificate of nomination his receipt showing and designating himself as Village Clerk of said Village and authorized to take said Petition or Certificate of Nomination.

The record further shows and the files of said Electoral Board further show that the said papers were sent to the Honorable Edmund K. Jarecki, Chairman of said
318 Electoral Board, who then took the necessary steps under the law to advise each and every candidate on

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the Certificate of Nomination against which objections were filed, calling a hearing on said matter in his chambers on Friday, March 23rd at 10:30 a.m. That pursuant to said notice the parties appeared and a transcript of said proceedings was had.

At this point I wish to introduce in evidence as a part of the record of said Board a so-called notice and call issued by the Chairman of said Board under the law. The said notice reads as follows:

CALL

To

Edmund K. Jarecki, County Judge and Louis Hoffman, Trustee of the Village of Lyons, Illinois and Ralph E. White, Village Clerk of the Village of Lyons, Illinois, constituting the Municipal Officers Electoral Board of the Village of Lyons:

Karl Schimmelphennig, Objector
O. H. Felton, Objector,

and the following candidates for the offices indicated:

Lyman F. Martin, Village President
Cecil Grgurich, Village Clerk
Joseph Cerny, Village Trustee
Henry J. Metz, Village Trustee
John F. Gazarek, Village Trustee
Frank J. Kucera, Police Magistrate

You are hereby notified that the above designated Municipal Officers Electoral Board is required by law to meet to hear and pass upon objections to the nominating petition of the Regular Peoples Party of the Village of
319 Lyons, Cook County, Illinois.

You are further notified that the above designated Municipal Officers Electoral Board of the Village of Lyons shall meet on Friday, the 23rd Day of March, 1945 at the hour of 10:00 A.M. in Room 603 in the County Court House, commonly referred to as the County Building, located at the southwest corner of West Randolph and North Clark Streets in Chicago, Illinois, for the purpose of hearing and passing upon the nominating petition of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois, and that a call has been and is hereby made by the said above designated Municipal Officers Electoral

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Board for said meeting to be held at the time and place and for the purposes as aforesaid.

Dated this Nineteenth Day of March, 1945.

Edmund K. Jarecki (Signed)
*County Judge of Cook County and Ex-Officio Chairman of the Municipal Officers Electoral Board of the Village of Lyons.*

March 23, 1945.

To:
Ralph E. White,
Village Clerk,
Village Hall,
Lyons, Illinois

For expenses and mailing notice of call in re Objections of Karl Schimmelphennig and O. H. Feltman of nominees of the Regular People's Party, ten notices of call, special delivery, return receipt requested twenty-seven cents
320 each, total $2.70.

(sgd) Edmund K. Jarecki
*County Judge of Cook County and ex-officio chairman of Municipal Officers Electoral Board.*

I further wish to offer in evidence and make a part of this record the following document. The notice will be marked "A" and the second document will be marked "B". The following communication was sent by Judge Edmund K. Jarecki to the Hon. Ralph E. White, Village Clerk, Village Hall, 4130 Maple Avenue, Lyons, Illinois.

March 23, 1945

"Dear Sir:

I am enclosing herewith a bill for expenses incurred by the Electoral Board in a hearing on the Objections of Karl Schimmelphennig to said Certificate of Nomination of the Regular People's Party.

Kindly make your check payable to John S. Rusch, Chief Clerk of the Board of Election Commissioners, inasmuch as the postage was advanced by that office.

Yours truly,

(Sgd) Edmund K. Jarecki
*County Judge*
by John P. Daly."

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I further wish to give the Board my opinion of the several matters which have appeared from the transcript of proceedings had on March 23, 1945 at 10:15 a.m. in the chambers of the Honorable Edmund K. Jarecki, wherein
the said Electoral Board composed of Ralph E. White,
321 Village Clerk and Louis Hoffman, Village Trustee
took part, and which transcript shows proceedings had on that morning.

The Chairman of said Board called the meeting to order and thereupon proceeded to do the business of the said Electoral Board; that a discussion was had with reference to the Objections filed against the Certificate of Nomination of the Regular People's Party and appears from the said transcript that Mr. Urban A. Lavery and Frank Lexa, attorneys entered their appearance and represented, in a legal capacity, the candidates of the Regular People's Party and the Regular People's Party. That Mr. Lavery proceeded to attack the eligibility of Mr. Ralph E. White on the grounds that he is also the Chief of Police of the Village of Lyons, and that he resigned as Village Clerk. On this matter I give you this opinion:

It is my considered opinion that Mr. White is the duly acting and qualified Village Clerk; that he signs all ordinances, vouchers, and all documents on which the signature of the Village Clerk and the Village Seal are necessary, and that he has been functioning and is now functioning as Village Clerk of said Village.

That the Certificate of Nomination admits the fact that these candidates and this Regular People's Party conceded that Mr. White is the Village Clerk, and until the Objections to this petition were filed, they acknowledged the fact that he is functioning and acting as the Village Clerk of said Village.

Another question which arises out of the transcript before this Board was the question of census. Mr. Lavery
raised the question that the Village of Lyons doesn't
322 have a population of over five thousand. On this point
I make the following opinion:

The transcript is silent that Mr. White, a member of this Board offered to the Board three affidavits, one affidavit certified to by him and under oath stated the number of registered legal votes of the Village of Lyons as and for the year 1941 as 2650; one affidavit showing the number of

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legal votes registered in the Village of Lyons for the year 1943 as 2936; another affidavit showing the number of legal votes registered in the Village of Lyons for the year 1945 and ending March 3, 1945 totaling 3492.

It is further certified to by Mr. White that he offered an affidavit under oath showing that the last municipal census, according to his books and records was in excess of 6,200.

It is also not shown in the record that any objection was made to these affidavits by Mr. Lavery or Mr. Lexa or anyone present regarding the authenticity of said affidavits or the matter which they contain. Said affidavits were received and filed with the Chairman, the Honorable Edmund K. Jarecki on the hearing. There was no other evidence introduced at this hearing.

The said affidavits were accepted and filed.

It is my further opinion, and I have written an opinion which I will present to you now on the question of elections in Cities and Villages under Article 10 of the Revised Statutes 1943 and Amendments thereto of the State of Illinois. This Board has no reason and cannot disregard the law because the said law is unpopular.

Your duty in this matter is plain, and the fact that Judge Jarecki has resigned or has attempted to declare this Board dissolved has no bearing on your acts and duties as members of the Electoral Board, and that you must, under the statute, continue to function. You must enter a finding on this matter, and we come to this point in the proceedings today.

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The transcript of the proceedings had on March 23, 1945 shows that the Chairman requested a vote of the members of the Electoral Board on whether or not to put the candidates of the People's Party on the ballot in view of the defect in the Certificate of Nominations filed with the Clerk, whether or not they are going to sustain the objections. The vote was taken and the transcript shows that Judge Jarecki voted not to sustain the objections and members White and Hoffman voted to sustain the objections.

After this action had taken place Mr. Lavery and Mr. Lexa, by motion, requested the Chairman to suspend entering a finding until Tuesday, March 27th at noon, and asked the Chairman and the Board to adjourn until that time.

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You are here this morning to finish what duties you have in connection with this matter this morning, and I have prepared certain papers for you to consider and pass and adopt. One of them is a resolution, which is as follows:

RESOLUTIONS.

Whereas the Electoral Board of the Village of Lyons, consisting of the Honorable Edmund K. Jarecki, Chairman, Mr. Ralph E. White and Mr. Louis Hoffman, members, convened on March 23, 1945 at 10 a. m. in the
324 court room of the said Honorable Edmund K. Jarecki to consider the Objections of Karl Schimmelphennig and O. H. Felton to the Certificate of Nomination of the Regular People's Party of the Village of Lyons, and

Whereas, at the said hearing a vote was taken on the question of sustaining the objections of the said Karl Schimmelphennig and O. H. Felton to the Certificate of Nomination of the Regular People's Party, which said vote was duly recorded and shows that the Honorable Edmund K. Jarecki, Chairman, voted against sustaining said objection and that Mr. Ralph E. White and Louis Hoffman voted for sustaining said objection, and

Whereas, Mr. Urban A. Lavery and Mr. Frank J. Lexa appeared on behalf of the Regular People's Party and challenged the right of Mr. Ralph E. White to act as a member of the above named Electoral Board, alleging as the reasons for their challenge that said Mr. Ralph E. White was not the Village Clerk of the Village of Lyons, having resigned and having been sworn in as Chief of Police of the Village of Lyons, and

Whereas, the said Honorable Edmund K. Jarecki has returned all Certificates of Nomination or nomination papers and other documents to the Village of Lyons and has declared this Electoral Board dissolved, and

Whereas, the said Ralph E. White and Mr. Louis Hoffman have examined the minutes of the Board of Trustees of the Village of Lyons and have found that the said Ralph E. White has not resigned, but that he is the duly elected qualified and acting Village Clerk of the Village of Lyons, and as such is a duly qualified member of the Electoral Board of the Village of Lyons, and

Whereas, no testimony was adduced at the hearing
325 of this Electoral Board on March 23, 1945 touching upon the election and qualifications of said Ralph E. White as Village Clerk and the Board having here and

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now considered the said Certificate of nomination and the objections made thereto and the evidence offered in support of said objections and having heard the arguments of counsel and being fully advised,

Now Therefore be it and it is hereby resolved by the Electoral Board of the Village of Lyons as follows:

1. That it has jurisdiction to hear and consider the said objections to said Certificate of Nomination.

2. That the Regular People's Party is an established political party within the Village of Lyons, Cook County, Illinois.

3. That the population of the Village of Lyons is in excess of six thousand persons.

4. That the Certificate of Nomination filed by the Regular People's Party does not comply with article 10 of the Election Code of the Illinois Revised Statutes 1943 governing the nomination of candidates for established political parties and is therefore null and void.

Therefore this Board rules:

1. That the Electoral Board of the Village of Lyons, which convened on March 23, 1945 as above stated was in all respects legal and was qualified to act.

2. That the vote taken at the hearing of March 23, 1945 was legal and binding.

3. That the findings of the Electoral Board at the hearing of March 23, 1945 were legal and binding and should be entered upon the records of this Board.

4. That the Honorable Edmund K. Jarecki, as
326 Chairman of the said Electoral Board has refused to so enter his vote and findings and submit copies thereof to the candidates of the Regular People's Party, the Village Clerk of the Village of Lyons, and to the Objectors to said Certificates of Nomination as provided by law, and refuses to further participate herein.

5. Having failed to do so, Mr. Ralph E. White be and he is hereby authorized to make and enter such finding upon the records of this Electoral Board and to transmit to candidates of the Regular People's Party, to the Village Clerk of the Village of Lyons and to the Objectors of said Certificates of Nomination.

6. That this Board now adjourn sine die.

Adopted this 27th day of March, A. D. 1945.

.....

*Chairman*

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(Signed) Ralph E. White
*Village Clerk—member*
(Signed) Louis Hoffman
*Trustee Member*

Mr. Bulger: Gentlemen, my opinion is that you have a legal right to adopt this resolution.

Mr. Hoffman: In that case, I make a motion that the resolution be adopted and we take a vote, I vote aye for adoption.

Mr. White: Aye.

Mr. Bulger: Pursuant to your request on my opinion regarding certain matters which have taken place during these proceedings; for instance, the question of whether Judge Jarecki as Chairman of this Board had the right to dissolve this Board, I wish to make this statement
327 and I give it as my opinion.

That Judge Jarecki, under the law, has no authority and no power to dissolve this Board; that any objections that have been made against the eligibility of the Village Clerk, Mr. Ralph E. White, are not a part of these proceedings; that one of the ways in which the eligibility of his office can be tested is by proper action called a quo warranto.

I feel and I advise you so that even though Judge Jarecki refuses to act in this matter, and it has been apparent all through these proceedings that Judge Jarecki has taken it upon himself not to construe the law as it applies in matters of this kind, but to coerce you, if I may use the word, in attempting to keep the candidates against whom a petition has been filed, on the ballot.

Of course, the question arises as to whether or not this law is popular or unpopular or whether a duty which you perform is a popular or unpopular duty, and I say, in my opinion, you have no alternative except to follow the law in this matter, and it is just as much a right for an objector to file a petition objecting to the candidates on any political party who files a certificate of nomination, such as was done in this case with the Village Clerk, as it is for these same men who file their candidacy by such a petition. All through these proceedings it is apparent that Judge Jarecki failed in his duty to carry out the provisions of the law.

I further wish to make this statement, and I want you to consider it as my opinion, that Judge Jarecki in this

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matter does not act as a judicial officer, that his func-
328 tion is an administrative function; that he acts simply as an administrative officer. That he has no power as a judge to dissolve this Board. He has no more power to dissolve the Electoral Board of the Village of Lyons than to dissolve the Civil Service Commission Board. His duties are set out by the statute and he cannot assume any more or less than what the statute gives him.

What action he takes does not affect your right and your duty as members of this Board to proceed according to law, upon his refusal to act in the said matter. I want to make this statement in my own behalf for this reason: That all through these proceedings it has been apparent to me that Judge Jarecki was unwilling to cooperate in any way to do justice and to follow the law in this case. He informed—at least his Clerk informed me that the hearing on March 23, 1945 was to be held at 10:30, and when I arrived in the court room at 10:20 Judge Jarecki had already called a meeting of the Board and had already decided what steps to be taken and had adjourned the meeting.

It is also to be noted that Mr. Paul W. Brust, the attorney for the objectors in this matter, whose name and address was on the Objectors' Petition, was not ever notified as to the change of time or place of the hearing. No courtesy was extended to him as attorney representing the Objectors.

Judge Jarecki has referred some matters concerning this Electoral Board to one John Daly who is attorney for the Board of Election Commissioners, and who proceeded to act without authority in the matter, in so far as the Board was concerned, and refused to cooperate
329 with the other attorneys in the matter and attempted to advice the said Board regarding their rights and duties and functions as the Electoral Board of the Village of Lyons.

It is noteworthy that Judge Jarecki this morning refused to act by reason of the fact that he was served with a mandamus order by Mr. Lavery and Mr. Lexa, the mandamus which took place before Judge Fisher.

It is also noteworthy that the statements made by Judge Jarecki with reference to his duties and responsibilities in the matter, and his disregard of the rights of other members of this Board to act, using his prestige in the

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knowledge of the law and as a judicial officer to impress the other members of this Board, with righteousness and his sentiments in the matter.

In his action in this matter Judge Jarecki assumed to operate and function as County Judge or Judge of the County Court, and that he did not operate or function from the viewpoint that he was a person indicated by the statute to be a member of a lay body or administrative body functioning under the election law. He assumed the right and jurisdiction to enter orders and dissolved the Board, a function wholly beyond his jurisdiction. That in my opinion, he had no more jurisdiction to enter an order dissolving the Board than did any of the other two members of the Board. His only function additional to those of the other two members is that the statute designated him as Chairman of that administrative body.

Exhibit C, letter over the signature of Ralph E. 330 White, Village Clerk, to Lyman F. Martin as follows:

Enclosed herewith please find the ruling of the Lyons Municipal Officers Electoral Board which is self-explanatory.

Exhibit D, notice in case 45 C 2198—*People ex rel Martin* v. *Edmund K. Jarecki*— to Ralph E. White and Louis Hoffman, stating that on April 2, 1945, at the opening of court, Urban A. Lavery, attorney for relators, would appear before Judge Harry M. Fisher in his court room, and move for a leave to file a contempt petition, and for rule on said parties to answer as the court may direct, and an order of commitment to the County Jail for willful contempt of court, with copy of petition attached to notice.

Petition in contempt proceedings filed on April 2, 1945, in the Circuit Court of Cook County in the case of *People ex rel. Lyman F. Martin, et al, plaintiffs* v. *The Honorable Edmund K. Jarecki, etc., Defendants,* No. 45 C 2198, as follows:

PETITION IN CONTEMPT PROCEEDINGS.

*To the Honorable Judges of the Circuit Court of Cook County, Illinois:*

Now come your petitioners, Lyman F. Martin, Cecil Grgurich, Joseph Cerney, Henry J. Metz, John F. Gazarek and Frank J. Kucera, and file this their petition pursu-

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ant to leave of Court first had and obtained and respectfully represent and show unto your Honors as follows:

1. A judgment in mandamus was duly entered by
331 this Honorable Court by the Honorable Harry M. Fisher, one of the Judges thereof in the above entitled cause on the 26th day of March, A. D. 1945, a copy of which judgment is hereto attached and by reference thereto incorporated herein and made a part hereof, the same as though set out in full in words and figures in the body of this petition and is marked petitioners' Exhibit "A".

2. That a true and correct copy of said judgment in mandamus was duly served on the Honorable Edmund K. Jarecki, the defendant in the original proceeding herein on or about 3:00 o'clock P. M. on the 26th day of March, A. D., 1945.

3. On the same date last mentioned, in compliance with said judgment in mandamus, the Honorable Edmund K. Jarecki, as Chairman of the purported Lyons Municipal Officers Electoral Board forthwith returned by registered United States mail all certificates of nomination or nomination papers together with a true and correct copy of said judgment in mandamus and all other documents concerning objections to the certificate of nomination of the Regular Peoples Party of Lyons, Illinois, then in his possession as Chairman of said purported Electoral Board back to the Village authorities of the Village of Lyons.

4. On the same date last mentioned the Honorable Edmund K. Jarecki as Chairman of said purported Lyons Municipal Officers Electoral Board in compliance with said judgment in mandamus entered a finding that no action whatever on the objections filed to the nominating petition of the Regular Peoples Party mentioned in the original Petition for Mandamus and Amendment thereto was taken by said purported Electoral Board and
332 entered a finding in the records of said Board to that effect; that said Board as convened was not properly and lawfully constituted under the law.

5. That on the same date the Honorable Edmund K. Jarecki, as Chairman of said purported Electoral Board dissolved said Board, consisting of himself, and the respondents Ralph E. White and Louis Hoffman.

6. Your petitioners further represent and show unto this Honorable Court that the respondents Ralph E. White

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and Louis Hoffman and each of them prior to engaging in the acts hereinafter complained of had due and proper notice and in all respects were aware of said judgment in mandamus and the purport and effect thereof and had notice of the entry thereof in the following manner namely:

(a) By personal written notice of said judgment in mandamus and the entry thereof, by having a true and correct copy of said judgment in mandamus in their possession.

(b) Said respondents were orally informed and notified by the Honorable Edmund K. Jarecki in his chambers of the entry of said mandamus judgment and of his compliance with the terms and provisions thereof as aforesaid.

(c) By notice from the Honorable Edmund K. Jarecki orally that he has severed his connections with said Board and that said Board has been dissolved.

(d) By being denied permission to use the courtroom of the Honorable Edmund K. Jarecki, by Judge Jarecki personally, for the purpose of engaging in the acts hereinafter complained of.

7. That the People of the State of Illinois and the
333 defendant, Honorable Edmund K. Jarecki, defendant, were represented by the States Attorney of Cook County, Illinois, by Gordon Nash, Assistant States Attorney.

8. Your petitioners further represent and show this Honorable Court that with full knowledge of all facts concerning the entry of said judgment and the compliance therewith on the part of the Honorable Edmund K. Jarecki and with utter disregard of all respect for the dignity of this Court and its judgments and orders in utter defiance and in willful contempt thereof, said respondents, Ralph E. White and Louis Hoffman committed the following acts after being denied permission by Honorable Edmund K. Jarecki to use his court room, #603, County Building, Chicago, namely:

(1) Illegally and unlawfully met and convened in Room 233, County Building, Chicago, Illinois, on or about 11:15 o'clock A. M. on the 27th day of March, A. D., 1945, as a purported Municipal Officers Electoral Board for the Village of Lyons without the Honorable Edmund K. Jarecki, as Chairman thereof.

(2) Unlawfully and improperly received and considered improper documentary evidence pertaining to and

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concerning the population of the Village of Lyons.

(3) Unlawfully and illegally received purported findings of fact and other documentary evidence.

(4) Illegally and unlawfully proceeded to consider and rule upon objections filed to the Certificate of Nomination for the Village offices of Village President of the Board of Trustees, Village Clerk, three Trustees and Police Magistrate for the Village of Lyons appearing on the Certificate of Nomination filed by
334 the Regular Peoples Party of the Village of Lyons.

(5) Illegally and unlawfully entered upon the purported records of said Board certain findings of fact pertaining to the objections last mentioned.

(6) At and prior to said illegal and unlawful convening and meeting of said purported Electoral Board and in advance of said purported hearing caused to be prepared the Resolution hereinafter mentioned with all findings of fact and rulings of said purported Board contained therein pursuant to a predesigned and deliberate and unlawful conspiracy, plan and intention to strike the names of your petitioners from the ballot and to prevent your petitioners from having their names printed on the official ballots to be submitted to the voters of the Village of Lyons at the Municipal Election to be held on April 17th, 1945, at Lyons, Cook County, Illinois.

(7) Illegally and unlawfully purported to pass and adopt a Resolution, a certified copy of which bearing the genuine signatures of the respondents, Ralph E. White, as Village Clerk and member, and of Louis Hoffman, as Trustee and Member is attached to the original of this Petition and by reference thereto incorporated herein and made a part of this Petition and is marked Petitioners' Exhibit "B" and copies of which are attached to copies of this Petition.

(8) Caused to be mailed to your Petitioners and each of them by registered United States Mail a purported certified copy of said purported Resolution together with a letter addressed to each of your Petitioners, a copy of said letter addressed to the petitioner, Lyman F. Martin is hereto attached and
335 by reference thereto incorporated herein and made a part hereof and is marked Petitioners' Exhibit "C".

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(9) Illegally and unlawfully directed and authorized the respondent, Ralph E. White, to enter the purported findings mentioned in said Resolution upon the purported records of said Electoral Board.

(10) Illegally and improperly directed the respondent Ralph E. White to mail the original Certificate of Nomination filed by the Regular Peoples Party by registered United States Mail together with all statement of candidacies attached thereto signed by your petitioners to the Regular Peoples Party, care of Mr. Paul Stednitz, in Lyons, Illinois.

(11) That in compliance with said illegal and unlawful direction the respondent Ralph E. White did illegally, unlawfully and improperly mail by registered United States Mail the original Certificate of Nomination filed by the Regular Peoples Party of the Village of Lyons to the Regular Peoples Party in care of Mr. Paul Stednitz in Lyons, Illinois.

9. That a copy of the transcript of all of said alleged proceedings above complained of was furnished to these Petitioners by the respondents on the 28th day of March, A. D., 1945, which copy of said transcript of proceedings your Petitioners will produce in open court upon the hearing of this Petition and offer same in evidence.

10. Your petitioners further represent and show that each, all and every of the acts above set forth were done and committed by the respondents Ralph E. White and Louis Hoffman willfully and contemptuously and in utter defiance and disregard of the orders of this Honorable
336 Court and with contempt for the respect and dignity with which said judgment in mandamus was entitled to be accorded and that the same was done contumaciously and deliberately.

11. Your Petitioners further represent and show that each, all and every of the acts above set forth were done and committed by the respondents Ralph E. White and Louis Hoffman while said judgment remained in full force, virtue and effect and that the said judgment had not been and is not now modified, appealed, vacated or reversed but still stands in full force and effect and that said respondents, while having full knowledge and notice of said mandamus judgment did not intervene in said proceedings and made no attempt to vacate, modify, reverse or appeal the same.

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12. Your petitioners further represent and show that each, all and every of said acts above complained of are illegal, unlawful and improper, and should be forthwith annulled, vacated and rescinded by the order of this Honorable Court.

Wherefore, your Petitioners pray that leave be given your Petitioners to file this verified Petition and all exhibits attached thereto instanter; that said respondents, Ralph E. White and Louis Hoffman, be ruled to answer this Petition under oath forthwith or within a short date to be fixed by the Court; that a hearing on said Petition and sworn Answer be had by this Honorable Court; that each, all and every of the illegal and unlawful purported acts by said respondents as members of said purported Lyons Municipal Officers Electoral Board be ordered rescinded, set aside and declared null and void and said respondents,
337 Ralph E. White and Louis Hoffman be ordered by this Honorable Court to return the original Certificate of Nomination by the Regular Peoples Party of the Village of Lyons and all statements of candidacies attached thereto signed by your Petitioners to the proper Village authorities forthwith, and that the names of your Petitioners be printed upon the ballots as the candidates of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois, on the 17th day of April, A. D., 1945; or in the alternative that the respondents be ruled in willful contempt of this Court and committed to the County Jail of Cook County, Illinois, for such contempt and that such other further orders in the premises may be entered as the Court may deem necessary and proper.

....., (signed by Six) *Petitioners.*

State of Illinois } ss.
County of Cook }

Lyman F. Martin, being first duly sworn on oath deposes and says that he is one of the petitioners in the above entitled cause and that he is the duly authorized agent of the remaining petitioners and is authorized to make this affidavit in their behalf; that he has read the above and foregoing petition and knows the contents thereof; that said Petition and the matters and things stated therein and averred are and that each of them is true in substance and in fact.

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338 Subscribed and sworn to before me on this 31st day of March, A. D., 1945.

.....
*Notary Public.*

Exhibit A-1 in said case No. 45C2198:

JUDGMENT IN MANDAMUS ENTERED MARCH 26, 1945.

This matter coming on to be heard in open court before the undersigned as one of the judges of the Circuit Court of Cook County; and the plaintiffs being represented in court by Urban A. Lavery, their attorney; and the defendant being represented in court by his attorney, William J. Tuohy, State's Attorney of Cook County, by Gordon Nash, Assistant State's Attorney, and having duly entered his appearance herein by his said attorney;

And this matter being submitted to the Court on the merits by agreement of the plaintiffs by their said attorney and the defendant by his said attorney; and the defendant having duly entered his oral motion *ora tenus* to dismiss the Petition for Mandamus herein as amended;

And the Court having considered the Petition for Mandamus herein as amended and the said Motion of the defendant above mentioned and having heard arguments of counsel for both plaintiffs and defendant in the premises, doth find the issues for the plaintiffs and against the defendant upon the defendant's said Motion; and the defendant having failed to plead further in the premises;

The Court now finds that the Municipal Electoral Board for the Village of Lyons, mentioned and described in the said Petition for Mandamus as amended, was illegally
339 constituted; and was particularly illegally constituted for the reason that one Ralph E. White, purporting to act as a member of the said Electoral Board by virtue of his being Village Clerk of the Village of Lyons, was not in truth and in fact Clerk of the Village of Lyons at the time of the convening and hearing of the said Electoral Board and therefore had no power or authority to act as a member of the said Electoral Board.

Wherefore, the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons, is hereby directed and ordered to enter a finding

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in the proceedings of the said Board, to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law and that the said Electoral Board, therefore, should be dissolved; and the said defendant is further ordered and directed, forthwith, to return all Certificates of Nomination or nomination papers and other documents now in his possession as such purported Chairman of the said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve the said purported Electoral Board.

(Signed)
HARRY M. FISHER
*Judge of the Circuit Court of Cook County.*

340 Motion to dismiss the rule to show cause in case No. 45C2198.

Now come the respondents, Ralph E. White and Louis Hoffman, by Joseph I. Bulger, their Attorney, and move the Court to discharge the Rule entered here on April 2, 1945, to show cause why they should not be punished as for an alleged contempt of court for the following reasons and in support of said reasons allege as follows:

1) That the Municipal Officers Electoral Board of the Village of Lyons is a statutory body created for a definite purpose whose membership thereon is vested by statute. It has no existence as a legal entity. It convenes, functions and adjourns *sine die* and thereafter has no existence.

2) That the refusal of one of its members, who happens to be designated as the Chairman by a statute, to further act, after it has been organized and is functioning as an electoral board, and has taken action, will not prevent the other members of the Electoral Board from continuing and completing the matters before it by filing its findings and rulings with the municipal authorities.

3) Plaintiffs in the above entitled cause purposely omitted making these respondents parties defendants thereto and the Court did not acquire jurisdiction to order the said Board dissolved.

4) That the Court did not acquire jurisdiction over the other two members of the said electoral board by the simple process of the making or naming one of the members of said board party defendant in the mandamus proceeding,

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and the mandamus order was void for want of parties defendant.

341 5) That the Court did not obtain jurisdiction over the said Electoral Board as a body for the reason that the said Board is not and was not a legal entity but three individual persons whose duties and functions are set out by the statute; that the said petition for mandamus purporting to make Edmund K. Jarecki a party defendant, as chairman affected only the actions of the said Edmund K. Jarecki and no other; that the order of this honorable Court was entered without acquiring jurisdiction of the parties, namely Ralph E. White and Louis Hoffman, and therefore the Court had no jurisdiction to enter said order.

6) That Edmund K. Jarecki as Chairman had no power or jurisdiction under the Statute to enter any order dissolving said Electoral Board but his statutory duty was to carry out the findings and ruling of the said electoral board and that this honorable Court had no jurisdiction to invest said Chairman with such power and the acts of the said Chairman, taken in obedience to, and in carrying out, said order were and are void.

7) That the said Petition shows upon its face that respondents are not parties to the above entitled proceeding and that nothing in the said mandamus order contained prevented these respondents from entering the previous ruling of the Board by certifying to the action which the three members had taken before the mandamus petition was filed.

8) That the mandamus order entered herein and directed to Edmund K. Jarecki as Chairman of the said Electoral Board did not and could take away from the respondents their duty cast upon them by the Statute

342 to carry out and complete the functions of the said Electoral Board.

9) That regardless of the said mandamus order it was the duty of the respondents to certify to the action of the Board taken upon said objections and cause the same to be filed with the proper municipal officers and authorities and to send copies to the persons interested in the result of the said finding and ruling.

10) That the Relators in this suit planned purposely to omit making the respondents parties to said mandamus proceedings, so that, an oral admission by Edmund K.

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Jarecki of the facts alleged might vest this honorable Court with authority immediately to enter a mandamus order and thereby deprive respondents of an opportunity to be heard upon the merits of said matter, and for such reason it is now inequitable that the respondents should be held in contempt of court for proceeding to perform their statutory duty, when they were purposely deprived of an opportunity to defend such action.

11) That respondent, Ralph E. White, upon the petition of relators and the admissions of the said Edmund K. Jarecki, and no more, was adjudged not to be Village Clerk of said Village of Lyons, thus collaterally adjudicating the title of this respondent, Ralph E. White, to said office, which is an action taken without due process of law and in violation of the Constitution of Illinois and of the United States.

12) That the said mandamus order was purposely not directed to these respondents and said order does not in any wise purport to control the acts of these respondents or direct them to take any action or restrain them
343 from taking any action, and could not have been intended to control their acts.

13) That the intended purpose of the said mandamus order was to destroy the said Electoral Board which this honorable Court had no jurisdiction or power to do.

14) That the said Electoral Board is created by the Statute and its duties are defined by the Statute and the said Electoral Board was supreme in its own jurisdiction and sphere and that this honorable Court had no power or jurisdiction to direct it to do any certain thing within its jurisdiction or to undo what it had done in the premises.

15) That said respondents before proceeding to enter their ruling in the matter before them consulted with an attorney of standing at the bar and an officer of this Court as to what action they should take in view of the cooperation of the said Edmund K. Jarecki with the attorneys for the plaintiffs in the procuring of said order, and were advised and informed in good faith that the said plaintiffs had deliberately omitted the respondents from said litigation, and that said order as entered was beyond the jurisdiction of the judiciary, and that it was the legal and bounden duty of the respondents to proceed to record the findings and rulings of the said Electoral Board which had

been made before said mandamus petition was filed, and before the said order was entered, and that these respondents, believing such action to be their right and duty, proceeded under advice of said attorney, and made a record of their said findings pursuant to the statute.

16) That these respondents deny all willful intention to act in contempt of this Court and urge that their acts are not in contempt of court and that their only desire
344 in the premises is and was to perform their statutory duty.

17) That the said Electoral Board is a part of the executive department function and that this honorable Court had no jurisdiction over the functions of the said Electoral Board.

18) That the said Board was legally and lawfully constituted according to law as in that case made and provided and that this honorable Court had no power or jurisdiction to dissolve the same upon the petition and admission of the said Edmund K. Jarecki without getting jurisdiction of the persons of the respondents herein.

19) That the said mandamus order is null and void in that it directed the Chairman of the said municipal electoral board to enter a finding in the proceedings of the said board to the effect that the said electoral board as convened was not properly and lawfully constituted under the law and that the said electoral board therefore should be dissolved; that the said Edmund K. Jarecki, failed to carry out the directions contained in the said order, refused to participate further in said proceedings and forbade the remaining members of the electoral board to convene in his chambers, or courtroom.

20) That the said mandamus order is null and void in that the electoral board had acted, had made a finding, and could not be dissolved as it already had taken action on the matters before them.

21) That the said respondents, Ralph E. White and Louis Hoffman, are parties in interest in the proceedings herein and should have been made parties to the said proceedings, and relators, having purposely omitted to make respondents defendants in said proceeding the said
345 mandamus order is null and void and the Court has no jurisdiction to punish these respondents for contempt for doing their statutory duty.

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22) That the Court has no jurisdiction to compel these respondents as members of the electoral board to do an illegal act.

23) That the Court has no jurisdiction over the persons of these respondents nor over the subject matter and cannot compel these respondents to obey such an order by commanding one of the members of the electoral board to commit an act of dissolution.

24) That the plaintiffs herein have not shown a clear legal right to the writ of mandamus and any order flowing therefrom is null and void.

25) That the said mandamus order creates confusion and disorder and does not promote substantial justice.

26) That the said mandamus order is null and void in that it interferes with the executive officers of the government in the exercise of their statutory duties.

27) That the statutory duty of these respondents is discretionary and may determine any matter which is the subject of their decisions and that this honorable Court had no jurisdiction to control the exercise thereof by a mandamus order.

28) That this mandamus order is attempting to determine collaterally the rights and duties and responsibilities of the said respondents and that this Court has no power or jurisdiction to adjudicate such rights and interests collaterally.

346 29) That the want of jurisdiction and power in this honorable Court appears upon the face of the petition and upon face of the mandamus order.

30) That the said petition for mandamus does not show that the said Edmund K. Jarecki had refused to perform his statutory duties and the said petition brought no subject matter to the court for adjudication.

31) The Court had no power to adjudicate upon the legality or illegality of said Electoral Board and the mandamus order is accordingly void.

Wherefore, respondents pray that the rule to show cause be dismissed and discharged.

Ralph E. White
Louis Hoffman

Oath of Ralph E. White and Louis Hoffman to the motion to dismiss and discharge the rule to show cause and that the motion is not made for the purpose of delay.

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Exhibit H being letter of Ralph E. White, clerk to Regular People's Political Party, dated March 28, 1945, as follows:

Regular People's Political Party
care of Mr. Paul O. Stednitz,
Presiding Officer,
8019 White Avenue, Lyons, Illinois
and
Mr. Lester W. Scheifelbin,
Secretary,
7842 W. 42nd Place,
Lyons, Illinois

Dear Sirs:

I am returning enclosed herewith Certificate of Nomination of the Regular People's Political Party filed with
347 me as Clerk of the Village of Lyons, Cook County, Illinois, and the rulings of the Lyons Municipal Officers Electoral Board, which is self-explanatory.

Respectfully yours,
Ralph E. White (Signed)
*Village Clerk.*
Village Hall
Village of Lyons

Exhibit "I" being letter to candidates enclosing ruling of the Electoral Board as follows:

RALPH E. WHITE
*Village Clerk*
Village Hall
Village of Lyons

March 2, 1945.

Lyman F. Martin,
8024 White Avenue, Lyons
Cecil Grgurich,
8129 White Avenue, Lyons
Joseph Cerny,
7915 45th Place, Lyons
Henry J. Metz,
8136 Ogden Avenue, Lyons
John F. Gazarek,
8737 Ogden Avenue, Lyons
348 Frank J. Kucera,
4323 Joliet Avenue, Lyons

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Enclosed herewith please find the rulings of the Lyons Municipal Officers Electoral Board, which is self-explanatory.

Respectfully yours,
Ralph E. White (Signed)
*Village Clerk.*
Village Hall
Village of Lyons

Judgment in mandamus entered April 13, 1945 in case No. 45 S 6174 *nunc pro tunc* as of April 12, 1945:

This cause coming on for hearing on the verified Petition for Mandamus of the above named petitioners and relators, filed herein on April 5, 1945, and also on the written Motion of the above named defendants to strike and dismiss the said petition, filed herein on April 12, 1945, and on the written Answer of the above-named defendants, filed herein on April 12, 1945;

And the Court having heard the evidence presented on behalf of the Petitioners, and having duly heard the arguments of counsel for the petitioners, and likewise the arguments of counsel for the defendants; and the Court being fully advised in the premises, the Court now finds:

1. This Court has jurisdiction of the parties hereto and of the subject matter of the cause.

2. The Court finds the issues for the petitioners and against the defendants.

3. The Court particularly finds that the petitioners above named and each of them are entitled to a per-
349 emptory Writ of Mandamus, as prayed in the Petition, against the defendants and each of them.

Wherefore, it is ordered and adjudged by the Court that a peremptory Writ in Mandamus issue forthwith out of the office of the Clerk of this Court, directing and commanding the defendants Ralph E. White, as Clerk of the Village of Lyons, County of Cook and State of Illinois, and as the pretending and acting and *pro-tem* Clerk of the said Village, and against the defendant Joseph F. Janda (insofar as he also is or may be the acting or *pro-tem* Clerk of the said Village of Lyons), and each of them, forthwith to do and perform the following:

A. The said defendants are hereby ordered, directed and commanded to print and cause to be printed the names of the petitioners, and each of them, on the ballots (both

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official ballots and sample ballots) to be printed and furnished by the Clerk of the Village of Lyons on, to-wit, April 17, 1945, as candidates of, and under the party caption or label of Regular People's Party.

B. More particularly, the said defendants are ordered, directed and commanded to print or cause to be printed the said ballots last above mentioned and described, and in the manner provided by law, in such fashion as to show on the said ballots (among other things) the following under one party column or label:

| Party Label | Regular People's Party |
|---|---|
| For Village President | Lyman F. Martin |
| For Village Clerk | Cecil Grgurich |
| For Village Trustee | Joseph Cerny |
| For Village Trustee | Henry J. Metz |
| For Village Trustee | John F. Gazarek |
| For Police Magistrate | Frank J. Kucera |

350 C. And that all of such printing on the said ballots above mentioned and described shall be done and performed by the said defendants in accordance with the certificate of Nomination heretofore duly filed by the said Regular People's Party of the Village of Lyons, with the Village Clerk of the said Village of Lyons, as shown by the said Certificate of Nomination duly presented to this Court on the hearing of this cause.

And it appearing to this Court on the hearing of this cause that the said defendants or either of them, acting as said Village Clerk of the Village of Lyons, have heretofore printed or caused to be printed certain pretended or proposed ballots (both official ballots and sample ballots) for the said Village election, on, to-wit, April 17, 1945, upon which ballots the names of the said petitioners and each and all of them are entirely missing:

Now therefore, the said defendants, and each of them (so far as either of them may act or purport to act as said Village Clerk) are ordered, directed and commanded as follows:

A. The said defendants are ordered and directed and commanded forthwith to cancel and destroy all such ballots as may have heretofore been printed (as above set forth) for the said Village election on April 17, 1945.

B. The said defendants are specifically and particularly ordered, directed and commanded not to permit any of the

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ballots last above described to be used by any precinct voting official or by any voter in the said Village of Lyons at the said election.

C. But on the contrary, the said defendants are ordered, directed and commanded to print and provide to all
351 precinct voting officials, and for the use of all voters, at the said Village election on April 17, 1945, ballots (both official ballots and sample ballots) with the names of the petitioners thereon as hereinbefore ordered and directed in this Judgment in Mandamus.

And the defendants and each of them are further directed, ordered and commanded in all respects to recognize and acknowledge and use and respect the Certificates of Nomination of the Petitioners and each of them as if no so-called "Objections" had ever been presented against the said Certificates of Nomination of the petitioners or any of them.

All of which the defendants shall do and perform in accordance with law; and for the failure to do any of the things or acts hereinabove ordered, the said defendants and each of them shall suffer such penalties as the law may provide.

And it is further ordered that the Clerk of this Court shall forthwith, and by special messenger, return to the Village Clerk of the Village of Lyons, and leave with the said Clerk the original Certificates of Nomination of the petitioners, herein, heretofore impounded by order of this Court on, to-wit, the 10th day of April, 1945.

Entered April 13, 1945, *nunc pro tunc* as of April 12, 1945.

Joseph A. Graber (Signed)
*Judge, Superior Court of Cook County*

352 PROCEEDINGS IN PEOPLE EX REL MARTIN *vs.* RALPH E. WHITE AND JOSEPH F. JANDA

Petition for Mandamus in Case 45 S 6174.

Transcript of Proceeding before Honorable Joseph A. Graber, Judge—commencing April 12, 1945.

Present:

Urban A. Lavery and Frank J. Lexa,
for petitioners.

Joseph I. Bulger,
for respondents.

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Mr. Bulger: I have a motion for a change of venue. I have served notice.

Notice presented to the court, receipted for on April 11, 1945 by Messrs. Lavery and Lexa, Attorneys for Plaintiffs, and over the signature of Joseph I. Bulger, Attorney for Defendants, states that on April 12, 1945, at 10:00 o'clock A. M. or as soon thereafter as the court convenes, Attorney for Defendants will appear before Honorable Joseph A. Graber and present a petition for a change of venue, a copy of which is attached to the notice and served.

Petition for change of venue presented to the Court is shown at record pages 30-31 (see Abstract Page 17).

The Court: The signatures must be signed to the petition. The petition must be under oath. There is no jurat there.

Mr. Bulger: The petition states "under oath".

The Court: It is not under oath.

Mr. Bulger: Your Honor this is only an oversight. The verification is in that petition, because they say "un-
353 der oath". It is purely an oversight; it was done in a hurry.

The Court: Your petition is denied because your petition is in bad form. You may draw your order setting up the reasons for the denial of the petition in the order.

Mr. Lavery: In this matter of the People of the State of Illinois Ex Rel Lyman Martin versus White, your Honor, as I understand it, this is set down for hearing on the merits as an emergency matter, being a mandamus proceeding and therefore entitled to emergency consideration by the Court, under the statute. If the Court will permit I will make a short preliminary statement.

This suit was filed on last Thursday, a week ago today, service of summons was had on the parties defendant on Thursday—the next day, Friday. Prior to filing suit—perhaps before I go into that, I will get before the Court the situation with respect to the pleadings. We filed a verified petition with exhibits attached. There is on file,—it was filed yesterday, April 11th, in this cause, what is called a motion to dismiss and strike the petition herein. It is a document of five pages, including the affidavit of Mr. Bulger, counsel for the parties.

Your Honor will, I am sure, conclude that that is an answer rather than a motion to strike, because it contains

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numerous denials. Therefore the matters that are not denied in that document, and which are set out in our verified petition must be taken for being admitted on this record.

One of the things we set out in our petition is the fact that prior to the filing of the petition we served a writ-
354 ten notice on both of these defendants here, White and Janda, claiming our legal rights to be, our parties to be on the ballot to be printed, and that notice was served on the 3rd day of April.

Now, we did that out of extra caution. I don't think we have to do that because a public official is required by law to take notice of the rights of the parties, but I want to offer as our first exhibit, the original notice served on these defendants for that purpose—

Mr. Bulger: May I interrupt, your Honor?

As I understand the rule under the Civil Practice Act a mandamus action is no more or less than a regular lawsuit, and the statute provides within which time the pleadings may be filed; either motion to dismiss or answer to a complaint. Now I have a motion to dismiss here and I want to be heard and I object—

The Court: I think counsel is right. It is a petition to dismiss, I think he has the right to be heard.

Mr. Lavery: May I make a preliminary suggestion, what I was doing and what I was allowed to do for this purpose, which I think I have the right to do as preliminary to Mr. Bulger's motion. I want this Court to take cognizance of the fact that notwithstanding the pendency of this suit and notwithstanding the fact that the defendants here were served with process a week ago, last Friday, that since that time they have proceeded to print ballots.

The Court: I have heard that. You stated that once before. You told me.

Mr. Lavery: I think that is in definance of the rule *lis pendens*.

Mr. Bulger: If the Court please, this motion to dismiss—

The Court: Motion to dismiss.

Mr. Bulger: (Continuing)—Is based on the allegation of this complaint. We alleged in this motion to dismiss that this complaint is insufficient. I want to call your Honor's attention to the complaint which alleges that the suit was filed in the Circuit Court, 45-C-2198, and also on an order of mandamus which was ordered there by Judge

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Fisher on the 26th of March, 1945, against the Honorable Edmund K. Jarecki, as chairman of the Election Board. I want to call your Honor's attention to the fact that they allege, and they have in this complaint as an exhibit, a copy of the objections, or rather, a letter which was written by the Village Clerk of Lyons to the Honorable Edmund K. Jarecki, regarding some objections which were filed; they also have an exhibit, B-1 and 2, the order, which is a correct order; they also have an exhibit, a letter which was written by the Honorable Judge Jarecki to the Honorable Ralph White, Village Clerk, regarding these objections, and what Judge Jarecki did with the papers and other things that he had in his possession as chairman of that board.

There is also a demand made upon Mr. White and Mr. Janda regarding putting them on a ballot.

Now, this petition does not disclose all the facts; this petition is insufficient; it does not disclose all the facts upon which to base the right to mandamus the Village Clerk to print their names on the ballots.

356 I say it is insufficient. And further because the proceedings which this electoral board had in connection with these objections are and should be made a part of this complaint for the very simple reason that if your Honor brushes that aside it will be disposing of a matter which has already been disposed of by a Board which is equal in jurisdiction with the jurisdiction of this court.

This electoral board is a statutory body. When these objections were filed against them in this petition the necessary steps were taken by the Clerk to convene this electoral board and it did convene. They did make a finding and they did send the finding to the various candidates on the ticket. That should have all been a part of this petition.

This motion to strike goes to that very fact, because they have alleged only a part of those proceedings. And your Honor cannot I believe, in a mandamus review the acts of this board, regarding what they did with those objections and how they ruled.

The Court: I am not interested. What concern is that to me.

Mr. Bulger: Your Honor must be concerned.

The Court: What concern is that to me?

Mr. Bulger: Because that board,—this board has con-

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trol over the objections which were filed against that nominating—

The Court: You have a way of reaching that. That is none of my concern.

Mr. Bulger: I will now, your Honor, refer you to the statute regarding these proceedings, and I quote now from Chapter 46—this is the Election Code, Chapter 46, 357 on page 315 of the Revised Smith Hurd Annotated Statutes.

Mr. Lavery: What section?

Mr. Bulger: Section 10.

"The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they were filed within the time and under the condition required by law, and whether or not they are the genuine certificates of nomination or nomination papers which they purport to be, and whether or not in the case of the certificates of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nomination papers on file are valid or *whether the objections thereto shall be sustained and the decision of a majority of the electoral board shall be final.*

"Within 24 hours after the electoral board has made its decision, it shall transmit, by registered mail, a certified copy of its ruling, together with the original certificate of nomination or nomination papers, and the original objector's petition, to the officer or board with whom the certificate of nomination or nomination papers, as objected to, were on file, and *such officer or board shall abide by and comply with the ruling so made to all intents and purposes.*" (Italics ours.)

Now, Ralph White was a member of the board; Ralph White received a certified copy of the ruling of that board. Therefore he as an officer is obligated by law to print these ballots; receiving this ruling he must follow that ruling.

The further contention is made then that this board was illegally constituted because Mr. White is part 358 time police officer in the Village of Lyons. I don't think I have to cite any law.

The Court: Why argue all that to me? The only thing as I see it is the question whether these particular men

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filed their certificates of nomination, or whatever it was their particular ambition to become some particular officer out in Lyons, whether or not they have the right—

Mr. Bulger: You have no right to order an illegal act—

The Court: That is what I want to find out, whether or not they have followed the law completely with reference to calling themselves candidates for this office. That is what I am interested in.

Mr. Bulger: Can your Honor from this petition decide whether or not that was done.

The Court: I don't know. I am willing to listen to find out—

Mr. Bulger: I am giving your Honor—

The Court: Don't waste any more time on what Judge Fisher did.

Mr. Bulger: Your Honor, Judge Fisher—

The Court: I don't see where it is applicable at all.

Mr. Bulger: Why not?

The Court: I say it is not. Now don't argue that any more.

Mr. Bulger: I bow to your Honor's wisdom.

The Court: I want to find out whether they have the right to have their names on this particular ballot that was submitted to the people next Tuesday, that is all I am interested in in this mandamus. What Judge Fisher
359 did is no concern. If there is anything defective in the manner in which they submitted their names as candidates, I am willing to hear you on that.

Mr. Bulger: My motion to dismiss goes to the insufficiency of this complaint.

The Court: Point out to me where the complaint is insufficient. Don't waste your time talking about what happened before Judge Fisher. I have not anything to do with that.

Mr. Bulger: Your Honor, they are urging what happened before Judge Fisher. They say that Judge Fisher entered this order. Now you say you are not interested in what happened before Judge Fisher. The allegations in this complaint say that there is an objection pending against this petition; their allegations say that these objections have not been disposed of. They must set up what happened to those objections.

The Court: Let me say this: I have read this petition

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very thoroughly, and it seems to me that here is the situation: There is to be an election in this Village of Lyons, or wherever it is, next Tuesday. They filed one ticket, the Peoples party filed another, and Mr. White, who is himself clerk of the city certified to Judge Jarecki that there were objections filed to these particular two individuals, and that under the statute, by reason of White's disqualifications.

Mr. Lavery: Bulat's disqualification—

The Court: That he was a member of the commission—White is Village Clerk. And then they appeared before Judge Fisher and it was determined that White was not the Village Clerk, and could not act in that capacity. Now that is all. The petition was sent back to the village clerk by Judge Jarecki, as is required. Now, the question before me is only this, as I see it in this mandamus. Inasmuch as the village clerk certified to the County Judge here that a certain man was clerk, and Judge Fisher determined that he was not the clerk, he had no right to act in that capacity. If there was a clerk, the next move should have been to follow the statute, get another board. And they did not do that.

Mr. Lavery: You cannot do that under the statute. That cannot be done.

The Court: At any rate, it was not done.

Now, it is a question of no objections having been heard, nothing having been passed on, the proper procedure not having been followed, is there any reason why their names should not appear on the ballot. That is the only question before me. If their petitions are in proper form; if, as set out, they had a right to file petitions, they are recognized parties and they filed a proper oath of acceptance,—nominations, whatever you wish to call them, what is there left for me to do?

Mr. Lavery: I think there is nothing, except issue an order.

Mr. Bulger: May I have the exhibits which you impounded?

The Court: They are here.

Mr. Bulger: Look at these nominating petitions, your Honor. They are made out to Ralph White, as clerk. And that petition—(indicating) while this man White was



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361 acting as clerk. There is no question about White's right to hold that office—

The Court: Hasn't that been decided?

Mr. Lavery: Yes.

Mr. Bulger: It has not.

The Court: How can I act as an appellate court over Judge Fisher.

Mr. Bulger: Your Honor has.

The Court: If I would say that he has a right to act, —that whatever he did was done in proper form, I will in effect act as appellate court over Judge Fisher and say that Judge Fisher was wrong.

Mr. Bulger: I want to repeat, and I am not showing any disrespect, but your Honor says the proceedings before Judge Fisher you have nothing to do with.

The Court: I reiterate that. That is a closed book as far as I am concerned.

Mr. Bulger: Judge Fisher does not—

The Court: Listen, Counsel, I will make my position very clear to you. I may be wrong, but insofar as Judge Fisher is concerned, to me that is a closed book. I have nothing to do with that whatsoever. I have no right to interfere with Judge Fisher, or change or modify or do anything with reference to that, because I am not an appellate court. I am just another court in a current jurisdiction. Whatever his order is that order stands as it is, until some one in higher authority reverses it. That is all as far as Judge Fisher is concerned. All I am interested in and the only thing before me is this: They filed here what pur-

ports to be a regular Peoples Party—had a conven-

362 tion, met, and so forth, and they nominated various people here, and they set them out. It is sworn to and apparently in proper form. And they set out they have a right to be recognized as a political party here in the Village of Lyons—

Mr. Bulger: May I say this, your Honor—

The Court: (Continuing)—then these men have filed their statements, they were sworn to, they seem to be in proper form.

Now, if there is any contest on the regularity of any of these things of course that—

Mr. Lavery: That time has gone by.

Mr. Bulger: Objections were filed. They allege in their

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petition here, according to the allegations in their petition that these objections are still pending. And if these objections are still pending, your Honor cannot disregard the statute. The statute states—

The Court: According to that you could never hold an election.

Mr. Bulger: Oh, yes, you could.

The Court: After all, anybody could start suit and deliberately deprive certain people to offer themselves to the voters of Lyons or whatever the town is, as candidates for certain offices, and by motions delay it until such time as an action by the court would be an improper action.

Mr. Bulger: They chose the Circuit Court on the mandamus. They could have made all the parties defendant in the mandamus. And they themselves went into court. They had plenty of time. Now they come into this court and ask your Honor to put them on the ballot.

363 The Court: And that is what I am going to do. I am going to put them on the ballot.

Mr. Bulger: May I have the exhibits, the documents impounded.

Mr. Lavery: I want these marked as exhibits.

The Court: All right, they may be marked.

(The said exhibits are the certificate of nomination of Lyman F. Martin and other candidates on Regular Peoples Party, and their affidavits of candidacy which are shown elsewhere in this Abstract at pages 53 to 55.)

Mr. Bulger: May I have leave to file an answer to the petition?

The Court: All right, you may file the answer.

Mr. Lavery: May these documents be released from the impounding order which your Honor previously entered?

The Court: Yes.

Mr. Bulger: Are you overruling our demurrer then?

The Court: I am overruling your demurrer.

Mr. Bulger: We will draw an order to that effect.

The Court: Directing these names to be placed upon the ballot for the election next Tuesday. Incorporate that in the order, and bring it in tomorrow morning.

Mr. Lavery: There is a preliminary question. We have to have the judgment against both of these people. Who is the clerk here?

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The Court: Have it run against both of them. If one is not the clerk, we have the other one.

364 PROCEEDINGS OF FRIDAY, APRIL 13, 1945.

Present: Mr. Urban A. Lavery, and Mr. Joseph L. Bulger.

Mr. Lavery: I drafted the order which provides that the ticket shall go on the ballot, and then that the present printed ballots shall be cancelled or destroyed; and further that the impounded papers shall be released, and that the clerk shall forthwith return those papers to the village clerk,— which I think should be done today.

The Court: All right. They may be released.

Mr. Bulger: You are asking leave to withdraw the exhibits filed here yesterday? They are in evidence. I think the order ought to be entered asking leave to withdraw these exhibits, and that photostatic copies thereof be submitted and filed with this petition.

Mr. Lavery: If you want to perfect a record—

The Court: What we are doing now is: these exhibits should go back to the clerk.

Mr. Lavery: They are original papers. They never should have left the clerk.

The Court: That is right.

Mr. Lavery: That ends my part of the proceeding.

I don't know whether there is going to be an order for appeal here. If there is I want to make some suggestions.

Mr. Bulger: I have a form here, a bond form here.

365 Mr. Lavery: I make this suggestion—are you making a suggestion that you will take an appeal?

Mr. Bulger: Yes.

Mr. Lavery: With respect to that I have not seen any of the papers, counsel.

The Court: Suppose you go back there, go back in the jury room and look them over.

Mr. Lavery: Now, there is one thing I want to say in open court.

The Court: We will still be here when you get rid of these papers, in the meantime I can get rid of these other cases.

(Short recess.)

The Clerk: Martin versus White.

Mr. Lavery: Mr. Bulger has not submitted an order as we agreed. There are some pencil notes. But, before we

BLEED THROUGH

get to that I want to call the Court's attention to something which the Court is familiar with, with respect to the condition of a supersedeas bond or appeal bond in a case of this kind. The statute, Section 206, Chapter 110 of the Practice Act says that:

"If the appeal is from a judgment or decree for the recovery of money, the condition of the bond shall be for the prosecution of such appeal and the payment of the judgment, interest, damages, and costs in case the judgment is affirmed."

Now, this language I now read is the pertinent language: "In all other cases the condition shall be directed by the Court with reference to the character of the judgment, order, or decree appealed from."

366 If the Court will indulge me just a minute. The first thing I want to say is this. It is obvious there can be no sensible appeal. This election will be held next Tuesday, after which the whole thing becomes moot, and any appeal will be dismissed. We discussed that last night at some length. There is not anything that can be properly appealed from. If a bond is put up, the only effect of it, realistically, to sustain your Honor's judgment here, permit this ticket we represent to be put off the ballot.

I will say, over and above that, I want to have this thing done in an orderly fashion.

I have been now served with a notice of appeal, accepted service of that notice.

I would like this thing to be put over for a reasonable time so that Mr. Bulger and Mr. Rankin can submit to me, something in a finished form that I can look at. They have not done that.

The Court: All right. Monday morning.

Mr. Bulger: Your Honor, I am objecting—

The Court: Monday morning, you can submit your written order.

Mr. Bulger: May I have a few words.

The Court: Monday morning you can submit your written order.

(Motion denied.)

Mr. Bulger: I take exception to your Honor's ruling.

The Court: He has the right to see your order.

Mr. Bulger: I think your Honor ought to hear me on this matter.

367 The Court: Submit your order for appeal to Mr.

POOR COPY

Lavery, opposing counsel here, between now and Monday. Monday you can come in with the order.

Mr. Lavery: Come in here without further notice at ten.

Mr. Bulger: May I say a word? Mr. Lavery yesterday stood before this Court and said that he wanted to discuss, have a conference with me with reference to the condition of this bond.

He came yesterday and all he talked about was that we had no right to an appeal. This morning in this conference he said, "You draw it up and I will look at it."

The Court: Bring it in Monday morning.

Mr. Lavery: If the Court please, there is personal privilege here; that is not fair. Mr. Bulger had all yesterday afternoon, like I did, but he did not do it.

The Court: All right. Monday morning.

(Which was all the proceedings had on April 12 and 13th, 1945.)

Certification of official shorthand reporter.

Certification of Joseph A. Graber to report of proceedings.

Stipulation that original report of proceedings be used on appeal.

Notice of motion for April 16, 1945 to fix the amount and conditions of the appeal bond to be filed in the cause, and that counsel will present an appeal bond to be approved by the court when the terms and conditions thereof are fixed. Attached to notice is copy of proposed order
368 fixing terms and conditions and copy of proposed order approving an appeal bond. Proof of service upon counsel for petitioners by mail on April 13, 1945.

Copy of proposed order approving appeal bond and making notice of appeal a supersedeas.

Form of appeal bond attached to notice shown at record, page 202.

## APPEAL BOND.

### Appellate Court.

Know All Men By These Presents: That we, Ralph E. White and Joseph F. Janda, as Village Officials of the Village of Lyons and as principals and.....
.....as surety of the County of Cook and State of Illinois, are held and firmly bound unto The People of the State of Illinois, also of the same County and

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State, in the penal sum of Twenty-Five Thousand ($25,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally and firmly by these presents.

Witness our hands and seal this ..... day of April, A. D. 1945.

The Condition of the Above Obligation Is Such, That whereas, the said People of the State of Illinois ex rel. Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, did, on the .....day of April, A. D. 1945, in the Superior Court of Cook County, in the State aforesaid, and of the April
369 Term thereof, A. D. 1945, recover a Mandamus Judgment or Order against the above bounden Ralph E. White and Joseph F. Janda as Village Officials of the Village of Lyons, directing that a peremptory writ of mandamus issue forthwith directing the said Ralph E. White and Joseph F. Janda, or either of them, as Village Clerk of the Village of Lyons, and each of them, to do and perform certain official duties therein particularly specified besides costs of suit; from which said Mandamus Judgment or Order, the said Superior Court of Cook County, the said defendants, Ralph E. White and Joseph F. Janda, as Village officials of the Village of Lyons, have filed notice of an Appeal to the Appellate Court, within and for the First District in said State.

Now Therefore, if the said Ralph E. White and Joseph F. Janda shall duly prosecute their said appeal with effect, and moreover pay the amount of the costs and damages rendered, and to be rendered, against them in case the said Mandamus Judgment or Order shall be affirmed in said Appellate Court, then the above obligation to be void, otherwise to remain in full force and virtue.

Approved:

.....

*Judge of the Superior Court of Cook County.*

.....(Seal)

.....(Seal)

370 Notice dated April 14, 1945, given by counsel for plaintiffs to counsel for defendant that on April 16, 1945, it will move the court for an order requiring defendants to appear and submit for examination in connection with the proposed bond.

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Order entered April 16, 1945:

On motion of Attorney for plaintiffs and in response to due notice served on petitioners by defendants of intention to present their appeal bond, copy of which was attached to said notice and the Court having examined said appeal bond and finds same inadequate and insufficient and not in fact a valid bond;

It Is Therefore Ordered that said appeal bond be and the same is hereby rejected and disapproved.

It Is Further Ordered that leave be and the same is hereby given petitioners to file four (4) affidavits showing futile attempts to serve the Mandamus Order entered in the cause on the defendants herein.

Enter This 16th day of April, A. D. 1945.

Joseph A. Graber (Signed)
*Judge.*

#612

Notice of Appeal filed April 13, 1945, recites that the defendants, Ralph E. White and Joseph F. Janda, appealed from the judgment order of mandamus entered on April 13, 1945, *nunc pro tunc* as of April 12, 1945, to the Appellate Court of Illinois, First District, and that on appeal they will ask the Appellate Court to reverse the mandamus judgment order.

Notice of filing Notice of Appeal receipted for by counsel for plaintiffs on April 13, 1945, gives notice that ap-
371 peal was taken from the mandamus order entered on April 13, 1945 with copy of notice of appeal attached.

Praecipe for record filed April 16, 1945, calls for complete transcript of record including report of proceedings and all orders and documents filed subsequent to filing notice of appeal.

Proof of service of praecipe for record with copy thereof attached receipted for by counsel for plaintiffs on April 16, 1945.

Certification of Clerk of Superior Court to transcript of record as per praecipe including original report of proceedings by stipulation.

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JOSEPH I. BULGER,
*Attorney for Petitioners.*

ODE L. RANKIN,
JOSEPH I. BULGER,
*Of Counsel.*

372 ABSTRACT OF APPELLATE COURT RECORD

Placita.

Convening of the Appellate Court of Illinois, First District, June Term, A. D. 1945.

Motion supported by suggestions and affidavit of appellants to consolidate cause General Number 43493 for hearing with cause General Number 43515 in this Court on one set of abstracts and briefs to be filed; motion allowed.

Motion and affidavit of appellants to extend the time for filing abstracts and briefs; motion allowed.

Order assigning cause to the Second Division of the Appellate Court for hearing and determination.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Order that cause be taken under advisement on abstracts filed and briefs of appellants to be filed and briefs of appellees to be filed and consolidated with cause General Number 43515.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellees to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellants to extend the time for filing reply briefs; motion allowed.

373 Motion of appellants to extend the time for filing reply briefs; motion allowed.

May 29, A. D. 1946. Opinion of the Appellate Court that neither in the record and proceedings nor in the rendition of the judgment in the Mandamus proceedings is there anything erroneous, vicious, or defective; and that in the record there is no error: Therefore, it is considered by the Court that the judgment in the Mandamus proceedings entered by the Superior Court of Cook County be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said appellant their costs, etc.

June 12, A. D. 1946. Order denying appellants' petition for rehearing.

June 18, A. D. 1946. Motion of Ralph E. White and Joseph F. Janda, appellants in cause General Number 43493, and Ralph E. White, appellant in cause General Number 43515, that the issuance of the mandate in these causes be stayed pending the disposition of a petition for leave to appeal in the Supreme Court of Illinois to review the judgments of this Court; motion allowed, mandates stayed.

June 20, A. D. 1946. Certificate of the Clerk of the Appellate Court of Illinois, First District, to a true copy of the final order and judgment and all other proceedings of this Court in this cause.

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JOSEPH I. BULGER,
*Attorney for Petitioners.*

ODE L. RANKIN,
JOSEPH I. BULGER,
*Of Counsel.*

374 IN THE
APPELLATE COURT OF ILLINOIS.
FIRST DISTRICT.
OCTOBER TERM, A. D. 1945.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. LYMAN F. MARTIN, et al., Appellees,
vs.
RALPH E. WHITE and JOSEPH F. JANDA, Appellants.

Appeal from Superior Court, Cook County.

Honorable Joseph A. Graber, Judge Presiding.

ABSTRACT OF RECORD.

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JOSEPH I. BULGER,
*Attorney for Appellants.*

ODE L. RANKIN,
JOSEPH I. BULGER,
*Of Counsel.*

375 INDEX to Appellate Court Abstract of Record No. 43515.

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377 INDEX to Abstract of Appellate Court Record.
378

IN THE

APPELLATE COURT OF ILLINOIS,

FIRST DISTRICT.

OCTOBER TERM, A. D. 1945.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. LYMAN F. MARTIN, et al., Plaintiffs,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Defendants.

Appeal from Superior Court, Cook County.

Honorable Joseph A. Graber, Judge Presiding.

ABSTRACT OF RECORD.

(CASE No. 43515)

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Transcript of Record of contempt proceedings based upon the mandamus order entered April 13, 1945, shown at Record page 150 herein.

Judgment in Mandamus entered April 13, 1945 set out in full at page 78 of this abstract.

Affidavit filed in 45 S 6174 on April 13, 1945:

State of Illinois } ss.
County of Cook }

Frank Graczyk, being first duly sworn, on oath, deposes and says that affiant has read the affidavit of Joseph J.
379 Schultz, which affidavit shows efforts were made by the said Joseph J. Schultz and by this affiant to obtain service of the Mandamus Writ on the within named defendants, Ralph E. White and Joseph F. Janda, and knows the contents thereof and affiant says that each of them is true.

Affiant further states that he was present on all occasions mentioned in said Affidavit and at the time service of said Mandamus Writ was had on Mathilda Obhlidal, a niece of Joseph F. Janda, who resides with him as a member of his family and is over 21 years of age.

And further affiant sayeth not.

Frank E. Graczyk.

Subscribed and Sworn to before me on this 14th day of April, A. D. 1945.

Louise C. Polak,
*Notary Public.*

(Seal)

POOR COPY

Affidavit filed in 45 S 6174 on April 13, 1945:
State of Illinois }
County of Cook } ss.

Joseph Cerny, being first duly sworn, on oath, deposes and says that this affiant has read the affidavit of Lyman F. Martin reciting his attempts to obtain service of the Mandamus writ on the within named defendants, Ralph E. White and Joseph F. Janda; and that said affidavit and the matters and things therein stated are and that each of them are true.

Affiant further states that he accompanied the said Lyman F. Martin on all of said visits to the homes of
380 Ralph E. White and Joseph F. Janda and to the business address of Ralph E. White at Ceco Steel Products Corporation, Cicero, Illinois.

And further affiant sayeth not.

Joseph Cerny.

Subscribed and Sworn to before me on this 14th day of April, A. D. 1945.

Louise C. Polak,
(Seal) *Notary Public.*

Affidavit filed in 45 S 6174 on April 13, 1945:
State of Illinois }
County of Cook } ss.

Lyman F. Martin, being first duly sworn, on oath, deposes and says that affiant is one of the petitioners in the above entitled cause and that affiant and Joseph Cerny, another petitioner in this proceeding, attempted to serve the Writ of Mandamus issued in the above entitled cause on the within named defendant, Ralph E. White, at the Ceco Steel Products Corporation, a corporation in Cicero, Illinois, on April 13, 1945, where said Ralph E. White has been employed for some months continuously last past and then and there learned after diligent inquiry that Ralph E. White had not been at his place of employment all of said day or any part thereof.

That affiant and the said Joseph Cerny made three visits to the home of said Ralph E. White between the hours of 3:00 and 5:00 o'clock P. M. on said date but no one answered the door in response to loud and repeated knocks thereon by this affiant.

381 That affiant accompanied by the said Joseph Cerny also made three visits to the home of the defendant,

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Joseph F. Janda; that no one answered the door on any of said occasions in response to loud and repeated knocks made by the petitioner.

That at 5:00 o'clock P. M. on April 13th, 1945, this affiant turned said Writs and the Certificates of Nominations therein mentioned to Joseph J. Schultz for service.

And further affiant sayeth not.

Lyman F. Martin.

Subscribed and Sworn to before me on this 14th day of April, A. D. 1945.

Louise C. Polak,
*Notary Public.*

(Seal)

Sworn to on the 14th day.
Filed on the 13th day.
Reg. on the 16th day.

Affidavit filed in 45 S 6174 on April 13, 1945:

State of Illinois } ss.
County of Cook }

Joseph J. Schultz, being first duly sworn, on oath, deposes and says that affiant is over twenty-one years of age and is a duly registered and qualified voter in the Village of Lyons, that affiant in the company of Frank Graczyk performed the following acts in attempting to serve the Writ of Mandamus issued in the above entitled cause on the within named defendant, Ralph E. White.

(a) Affiant and the said Frank Graczyk made four calls at the Office of the Village Clerk and the Police De-
382 partment between the hours of 8:00 o'clock P. M. and 10:30 P. M. on April 13, 1945, and the said Ralph E. White was not in his office; that Ralph E. White, who is also Chief of Police of the Village of Lyons, was absent in the Police Department and was not at his desk on any occasions, and that affiant was informed in the Police Department that Ralph E. White is out of town.

(b) That affiant called at the home of Ralph E. White on five different occasions between the hours of 8:00 P. M. and 12:00 o'clock midnight on April 13th, 1945, and that no one answered said door in response to loud and repeated knockings on each occasion, and that affiant was informed by a neighbor of said Ralph E. White that said Ralph E. White has gone away on a three day vacation.

Affiant further says he also attempted service of said Writ on the within named defendant, Joseph F. Janda, ac-

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companied by Frank Graczyk. Affiant made three visits to the home of said Joseph F. Janda with the following results:

(a) On the first visit, about 8:45 P. M. on April 13, 1945, he was informed by the defendant, Joseph F. Janda's niece, who answered the door and who lives with him as a member of his family, that Joseph F. Janda had gone somewhere, she did not know where, and did not know when he would return.

(b) At 10:00 P. M. there was a light in the house when affiant and the said Frank Graczyk again returned in attempting to get service, the said niece above mentioned looked through the glass door but would not open the same.

(c) That at 11:00 P. M. on the same date, in response to a third visit to his home, the niece above mentioned
383 replied to affiant that Joseph F. Janda had not returned and she did not know when he would return to the home. That affiant said he had a writ he wanted to serve on the said Joseph F. Janda by leaving a copy with her but the said niece, Mathilda Obhlidal, cursed and swore at affiant through the glass door, which she refused to open, and ordered him to leave the house and threatened to call the police.

That at 9:15 A. M. on April 14th, 1945, affiant served said Writ of Mandamus on the said Joseph F. Janda by leaving a copy thereof with the said Mathilda Obhlidal, niece of the said Joseph F. Janda, who resides with him as a member of his family and is over the age of twenty-one years of age, by leaving a certified copy thereof with said niece, Mathilda Obhlidal, in front of the residence of said Joseph F. Janda, and that the said Frank Graczyk was present at the time said service was had and obtained.

That within thirty minutes of said service, one Herman Marose, a village policeman of the Village of Lyons, returned said Writ to the wife of this affiant while this affiant was attempting to get service on the said Ralph E. White.

And further affiant sayeth not.

Joseph J. Schultz.

Subscribed and sworn to before me this 14th day of April, A. D. 1945.

Louise C. Polak,
*Notary Public.*

(Seal)

BLEED THROUGH

384 Order entered April 16, 1945 in 45 S 6174:

On Motion of Attorney for Plaintiffs and in response to due notice served on petitioners by defendants of intention to present their appeal bond, copy of which was attached to said notice and the Court having examined said appeal bonds and finds same inadequate and insufficient and not in fact a valid bond;

It is therefore ordered that said appeal bond be and the same is hereby rejected and disapproved.

It is further ordered that leave be and the same is hereby given petitioners to file four (4) affidavits showing futile attempts to serve the Mandamus Order entered in the cause on the defendants herein.

Entered this 16th day of April, A. D. 1945.

Joseph A. Graber,
*Judge.*

Notice filed April 17, 1945, receipted for by attorneys for Plaintiffs on April 16, 1945 over the signature of attorney for Defendants, states that on April 17, 1945, Defendants would move the court to set aside its order entered on April 16, 1945, and strike the affidavits filed. Copy of motion, petition and order attached.

Motion filed in 45 S 6174 on April 17, 1945:

Now come Ralph E. White and Joseph F. Janda, and move the Court to set aside the Order entered on April 16, 1945, wherein the said Order provided denying the bond of the defendants pursuant to a Notice heretofore served upon the solicitors and attorneys for the plaintiffs and

385 show the Court that the said Motion was the defendants' motion and that the Attorney for the defendants being engaged was unable to appear for that and other reasons, and the defendants further show to the Court that a certain notice and purported service of a notice upon the attorney for the defendants which notice if it was served and filed was a violation of Rule 17 of the Rules of the Superior Court, Cook County, Illinois; that affidavit of the Attorney of record for the defendants, a copy of which is attached hereto and made a part hereof, is filed in support of this motion and petition.

It is shown to the Court that the address of the Attorney of Record for the defendants has been and is still 139 N. Clark Street, Chicago, Illinois, Room 1804, telephone State 4426-27.

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The defendants further show to the Court that four purported Affidavits were filed with the Court which are in violation of Rule 15 of the Superior Court, and that no copies of such Affidavits were served or filed or mailed to the Attorney of Record for the defendants in the above entitled cause. For that and for the above reasons and for other reasons which will be argued by the Attorney for the Defendants, the Defendants move the Court to set aside said Order and to strike the affidavits and to hold for naught the affidavits filed herein contrary to the provisions of said Rule 15.

Ralph E. White and Joseph F. Janda,
*Defendants Herein.*
By Joseph I. Bulger (Signed)
*Their Attorney.*

386 Now comes Joseph I. Bulger and upon oath deposes and says that he is the agent and Attorney for the Defendants, Ralph E. White and Joseph F. Janda; that he has read the above and foregoing Petition by him subscribed and knows the contents thereof and that the matters and things alleged therein are true in substance and in fact.

Joseph I. Bulger (Signed)

Subscribed and sworn to before me this 16th day of April, 1945.

Olga V. Marsh (Signed)
*Notary Public.*

Affidavit of Joseph I. Bulger that no notice was served on him prior to Saturday noon, April 14, 1945, pursuant to Rule 17 of the Superior Court and that no copies of the said affidavits were served on him pursuant to Rule 15 of the Superior Court.

Order entered in 45 S 6174 on April 17, 1945:

Motion of Attorney for defendants to vacate order entered in the above entitled cause on April 16, 1945, be and the same is hereby continued until April 18, 1945, without further notice.

It is further ordered that leave be and is given the petitioners herein to file their petition against the defendants to show cause why they should not be held in contempt of court for their failure to comply with the mandamus judgment entered herein, tomorrow, April 18, 1945, without further notice, defendants' Attorney being now present in open court.

387 PETITION FOR RULE TO SHOW CAUSE FILED APRIL 18, 1945, IN 45 S 6174.

Now come your petitioners, Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera, and respectfully represent and aver unto this Honorable Court that they are the petitioners in the above entitled cause and that a Mandamus Judgment was duly entered in this proceeding on the 13th day of April, A. D. 1945, *nunc pro tunc* as of April 12th, 1945, all of which will more fully appear from the original of said judgment order in the files and records of this proceeding, the original of which your petitioners will produce upon the hearing of this Petition.

Your petitioners further represent and aver that it was and is provided in said judgment order among other things as follows:

(a) That the defendants Ralph E. White and Joseph F. Janda forthwith cause the names of your petitioners to be printed upon the official ballot to be used in the Village election to be held on April 17th, 1945, in the Village of Lyons for the election of one president, one village clerk, three trustees and one police magistrate of said Village.

(b) That the defendants destroy the ballots which they had caused to be printed prior to said proceedings showing only the candidates of the Regular Progressive Citizens Party and not the names of your petitioners as candidates of the Regular Peoples Party and that the same be not used in the Village election above mentioned.

(c) That said defendants print new official ballots to be used in the election above mentioned showing the
388 names of your petitioners as candidates of the Regular Peoples Party as follows:

| | |
|---|---|
| For Village President: | For Police Magistrate: |
| For Village Clerk: | Lyman F. Martin |
| For Village Trustees: | Cecil Grgurich |
| | Joseph Cerny |
| | Henry J. Metz |
| | John F. Gazarek |
| | Frank J. Kucera |

and deliver the same to the judges of election for use by the voters of the Village of Lyons at said election on the 17th day of April, A. D. 1945.

Your petitioners further represent and aver that said defendants and each of them have failed and neglected and refuse to comply with said mandamus order in that they did not:

(1) Cause the names of your petitioners to be printed upon the official ballot used in the Village election held on April 17th, 1945 in the Village of Lyons for the election of one president, one village clerk, three trustees and one police magistrate of said Village.

(2) Destroy the ballots which they had caused to be printed prior to said proceedings showing only the candidates of the Regular Progressive Citizens Party and not the names of your petitioners as candidates of the Regular Peoples Party so that the same would not be used in the Village election above mentioned.

(3) Print new official ballots to be used in the election above mentioned showing the names of your petitioners as candidates of the Regular Peoples Party as follows:

389 For Village President: For Police Magistrate:
Lyman F. Martin
For Village Clerk:
For Village Trustees:
Cecil Grgurich
Joseph Cerny
Henry J. Metz
John F. Gazarek
Frank J. Kucera

and deliver the same to the judges of election for use by the voters of the Village of Lyons at said election on the 17th day of April, A. D. 1945.

That the defendants delivered to the judges of election as an official ballot for use in the Village election for village president, village clerk, three trustees and one police magistrate of the Village of Lyons for use in the election in said Village held on April 17, 1945, a ballot showing the names of the Regular Progressive Citizens ticket only, and omitting entirely the names of each, all and every of your petitioners therefrom in like form and tenor as the specimen ballot hereto attached insofar as the same pertains to the list of candidates printed on the face thereof, and that a copy of which specimen ballot, which was delivered by a police officer to the headquarters of the Regular Peoples Party is hereto attached and by reference thereto incorporated herein and made a part hereof.

That the defendants caused to be printed an official ballot for use in the Village election, which was held in the Village of Lyons on April 17th, 1945 for the election of one president, one village clerk, three trustees and one police magistrate of said Village, containing the candidates of one party only, namely, those of the Regular Progressive Citizens Party and no other names or
390 candidates of any other party whatsoever, and particularly not the names of your petitioners as candidates of the Regular Peoples Party of Lyons, Illinois.

Your petitioners further represent and aver that said defendants and each of them caused the said election above mentioned to proceed and be held with an official ballot containing only the names of one party, and particularly omitting the names of your petitioners as candidates for the Regular Peoples Party, and that the acts above mentioned and each of them were done in willful defiance of the order of this Honorable Court.

Wherefore, your petitioners pray that a rule to show cause be entered against the defendants and each of them to show cause why they should not be *punished as in willful contempt of court.*

Lyman F. Martin, Cecil Grgurich,
Joseph Cerny, Henry J. Metz, John
F. Gazarek, and Frank J. Kucera.
By Lyman F. Martin,
*Their Duly Authorized Agent.*

State of Illinois, } ss.
County of Cook. }

Lyman F. Martin, being first duly sworn, on oath deposes and says that he is one of the petitioners in the above entitled cause and is the duly authorized agent of the other petitioners in this behalf and has authority to file said Petition and make this affidavit on behalf of all petitioners herein; that affiant has read the above and foregoing Petition by him subscribed and knows the contents thereof
391 and that said Petition and the matters and things therein stated and averred are and that each of them is true.

Lyman F. Martin.

Subscribed and sworn to before me on this 17th day of April, A. D. 1945.

Louise C. Polak,
*Notary Public.*

(Seal)

SPECIMEN BALLOT

Village of Lyons, Cook County, Illinois
Election Tuesday, April 17, 1945
Polls Open from 6:00 A. M. to 5:00 P. M.

| REGULAR PROGRESSIVE CITIZENS TICKET | |
|---|---|
| For Village President | For Village President |
| ☐ Theofil T. Bulat | ☐ ..... |
| For Village Clerk | For Village Clerk |
| ☐ Joseph F. Janda | ☐ ..... |
| For Village Trustees (vote for three) | For Village Trustees (vote for three) |
| ☐ Matt Jadro | ☐ ..... |
| ☐ James Landa | ☐ ..... |
| ☐ Herman J. Toepper | ☐ ..... |
| For Police Magistrate | For Police Magistrate |
| ☐ James A. Cihlar | ☐ ..... |

Rule to show cause entered in 45 S 6174 on April 18, 392 1945:

On Motion of Attorney for petitioners and on due notice given herein, and the Court having read the verified Petition in support of said Motion, and it appearing to the Court that the Defendants, Ralph E. White and Joseph F. Janda, have not complied with said Order and that in violation of said Order submitted a ballot in the election held in the Village of Lyons on April 17, 1945, which did not carry the names of the petitioners herein or any of them.

It is therefore ordered that a rule be and is hereby entered on the defendants, Ralph E. White and Joseph F. Janda, to show cause why they should not be punished as in contempt, which rule is hereby made returnable on April 26, 1945.

Enter: Jos. A. Graber,
*Judge.*

Order for Attachment entered on April 26, 1945 in 45 S 6174:

On Motion of Attorney for Plaintiffs and this cause having come on now to be heard upon the rule to show cause why the defendants, Ralph E. White and Joseph F. Janda, and each of them should not be held in contempt

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for their failure to comply with the mandamus judgment entered in this proceeding and it appearing to the Court that certified copies of said rule were duly personally served on each of said defendants and that said defendants are not in response to said rule.

It is Therefore Ordered a Writ of Attachment issue at the cost of said defendants and each of them return-
393 able forthwith directed to the Sheriff of Cook County, Illinois, to produce said defendants, Ralph E. White and Joseph F. Janda, and each of them, before the bar of this court, forthwith, to answer said rule why they should not be punished for their failure to place the names of the petitioners on the ballot as directed by said Mandamus Judgment so to do.

Jos. A. Graber,
*Judge.*

Attachment for Contempt over the signature of H. Sonneschein, clerk, dated April 26, 1945, directs the sheriff to attach Ralph E. White and Joseph F. Janda and have their bodies in room 829, County Building, Chicago, to answer a contempt matter in failing to place the names of petitioners on ballot for Village of Lyons election held April 17, 1945, and otherwise comply with mandamus judgment.

MOTION TO DISMISS AND DISCHARGE RULE TO SHOW CAUSE FILED APRIL 26, 1945.

Now come the Defendants, Ralph E. White and Joseph F. Janda, by Joseph I. Bulger, their Attorney, and each of said Defendants file their separate Motions to said rule and in support thereof give the following reasons and say:

1. Said rule should be dismissed and discharged because:

(a) No certified copy of said mandamus order was served upon this Defendant personally;

(b) No Writ of Mandamus, either original or copy thereof, was ever served upon this Defendant personally;

(c) No certified copy of the said Mandamus order
394 nor any Writ of Mandamus, original or copy thereof, or mandate, was ever served upon this Defendant by posting or mailing the same to his place of abode or by leaving the same with any person or member of his family of the age of ten years or over;

(2) Said Rule should be dismissed and discharged as it

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is insufficient in law; its defects appearing upon the face of said Rule in the following respects:

(a) It fails to aver that this Defendant was ever served personally or otherwise;

(b) It fails to aver that a certified copy of said order was ever issued out of the Superior Court Clerk's office with the Court seal attested to by said Court Clerk;

(c) It fails to aver that a Writ of Mandamus was ever issued under the Superior Court's Seal out of the Superior Court Clerk's office and attested to by that officer;

(d) It fails to aver that a return of service was ever made upon this Defendant, either of a certified copy of the Mandamus order or of an Original Writ of Mandamus or copy thereof, or mandate of this Court upon the books, records, registers or dockets of the Sheriff of Cook County or of the Superior Court Clerk's office;

(e) Said rule flows from a Mandamus order that is ambiguous, indefinite, vague and doubtful in its directives;

(f) Said rule is insufficient in law as it recites naught but conclusions of the pleader unsupported with any facts to show any acts contemptuous in their nature;

(g) Said rule is insufficient in law as it fails to aver
395 affirmatively that this Defendant had any actual, constructive or implied knowledge of said Mandamus order;

(h) Said rule is insufficient in law as the defects appear upon its face showing that the conclusions therein are based upon inference, innuendo and implication;

(3) Said rule flows from a Mandamus order of April 13, 1945, which Order is Void, not erroneous, in the following respects:

(a) Said order is doubtful in its provisions;

(b) Said order is confusing in its directives;

(c) It orders two persons or either of them to do what the law imposes upon only one of them (the Village Clerk White) the Defendant herein and which is admitted by his answer to the petition for Mandamus;

(d) It is vague, indefinite, ambiguous and confusing in its terms and provisions;

(e) It attempts to but does not specifically order the officer specifically charged with the duty by law but on the contrary designates two persons one of whom has no duty to perform the act ordered under the law and therefore the command is impossible of performance;

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(f) Said order interferes with the acts, rulings and findings of a statutory Municipal Electoral Board governing elections in Municipalities not under the Chicago Election Board of Commissioners, (Chap. 46, Sec. 10-10, Election Code, Ill. Rev. Stat. 1943).

(g) Said order is a Judicial interference with a
396 branch of the Executive Department of the State Government;

(h) Said entire Mandamus proceedings herein are void as said proceedings are in their nature a review of the discretionary acts of a Statutory Board and an interference with its rulings and findings had and performed according to law for which Mandamus does not lie;

(4) Said rule should be dismissed and discharged as it fails to aver that said Plaintiffs or their agents complied with Superior Court Rule 18 respecting service of court orders and rulings;

(5) Mandamus does not lie to direct and command the performance of an illegal act or undo a lawful duty already performed;

(6) Said rule to show cause should be dismissed and discharged as this Honorable Court had no power or jurisdiction to enter the order of April 13, 1945, as it must take judicial notice of the Statutes controlling said Lyons election, more particularly Chap. 46, Sec. 16-0, of the Election Code, Ill. Rev. Stat. 1943, wherein it is required that Instructions and Specimen Ballots be posted at the polling places at least (5) days before said election of April 17, 1945; that Official election ballots shall be delivered to the Judges of election twelve (12) hours before the time for the opening of the places of polling, (Chap. 46, Sec. 16-5);

(7) Said Mandamus order is void in that it ordered a physically impossible act even if said order had been properly served upon the Village Clerk;

397 (8) Said Mandamus order is void in that it ordered the undoing of a duty already performed as provided by law; and its only purpose would have been, even if the said order had been properly served upon the Village Clerk, to create confusion and disorder and in effect halt the holding of an election of officers of said municipality;

(9) Said rule should be dismissed as it has not been shown that this defendant has committed any acts of disobedience of the Orders of this Court and avers that he

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has not intentionally or wilfully disobeyed any order of this Honorable Court;

(10) This Defendant incorporates and adopts the Motion of the Defendant Joseph F. Janda, filed herein as part of this motion and made a part hereof by reference.

For the above and foregoing stated reasons and for other reasons to be argued at the hearing of said motion this Defendant prays and moves the Court to dismiss and discharge the said rule to show cause.

Ralph E. White.
By Joseph I. Bulger,
*His Attorney.*

State of Illinois, } ss.
County of Cook. }

Joseph I. Bulger, certifies that he is attorney for Ralph E. White, defendant in the above entitled cause in Plaintiffs' rule to show cause and that he has read the above and foregoing motion; that said motion is not interposed for purposes of delay but that in his opinion said motion is well founded in point of law.

Joseph I. Bulger.

MOTION OF JOSEPH F. JANDA.

398 (1) This Defendant incorporates, adopts and makes Defendant Ralph E. White's above and foregoing motion a part of this motion by reference thereto;

(2) The Rule to show cause herein should be dismissed and discharged for the further reason that this defendant has not occupied the office of Village Clerk of the Village of Lyons, Cook County, Illinois; nor has he ever been appointed to said office to succeed the regularly elected Village Clerk, Ralph E. White, whose term of office does not expire until April 30, 1945; nor has this defendant been appointed by the President and Board of Trustees of said Village as acting clerk; or clerk pro tem; that the only capacity in which he has acted is as a part time record clerk in the office of Ralph E. White, the Village Clerk;

(3) Said order is void in that it orders this Defendant to destroy certain ballots and print other sample and official ballots over which he has no authority under the law as that duty is the statutory duty of the regular and duly acting and elected Village Clerk; or of the corporate or municipal authorities designated by law;

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Wherefore this Defendant prays and moves the Court to dismiss and discharge the said rule upon the reasons stated.

Joseph F. Janda.
By Joseph I. Bulger,
*His Attorney.*

State of Illinois, } ss.
County of Cook. }

Joseph I. Bulger, certifies that he is attorney for
399 Joseph F. Janda, defendant in the above entitled cause in Plaintiffs' Rule to Show Cause and that he has read the above and foregoing motion; that said motion is not interposed for purposes of delay but that in his opinion said motion is well founded in point of law.

Joseph I. Bulger.

Order entered April 27, 1945, shows Joseph I. Bulger, Attorney for Defendants, equally engaged in another court, and ordered that hearing against Respondents be continued until May 7, 1945.

Order entered May 9, 1945, that the hearing on the rule to show cause in the contempt proceedings, and the motion to strike and dismiss the contempt proceedings be continued to May 21, 1945.

Order entered May 21, 1945, continuing the hearing on the rule to show cause until May 25, 1945.

Order entered May 23, 1945, recites:

On motion of Court and this matter having come on to be heard upon the return of the rule to show cause and the court having read the briefs filed by the parties hereto for and against respondents motion to dismiss said rule and the court being now fully advised in the premises requests the petitioners to introduce evidence on the question as to which of said respondents is Village Clerk of Lyons, Illinois, so as possible, if the same can be ascertained from the Village records or otherwise.

400 It is therefore ordered that this cause be and the same is hereby continued for said purpose until Tuesday, May 29, 1945, without further notice.

Enter:

Jos. A. Graber (Signed)
*Judge.*

5/23/45

Order entered May 29, 1945 in 45 S 6174:

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On Motion of Attorney for defendants to fix bond for appeal and the plaintiffs having had due notice and counsel for the respective parties being in court and the court having heard counsel and being fully advised in the premises:

It is hereby ordered that defendants post $2,500 appeal bond with sureties to be approved by the court on Thursday, May 31, 1945.

It is further ordered that said $2,500 bond stay all contempt proceedings and rule to show cause is hereby continued generally until the appeal from Mandamus order entered on April 13, 1945 is decided by the appellate court.

It is further ordered that said $2,500 appeal bond be and the same is hereby made a supersedeas. To which entry of this order the petitioners object and except.

Enter:

Jos. A. Graber,
*Judge.*

Order entered May 31, 1945, that time for filing report of proceedings due on June 2, 1945, is extended to and including June 17, 1945.

401 Order entered June 1, 1945 in 45 S 6174 holding Ralph E. White in contempt of court:

This cause having come on now to be heard upon the Rule to Show Cause heretofore entered in this cause and the Court having jurisdiction of the parties hereto and the subject matter hereof, and being now fully advised in the premises, and the defendant, Ralph E. White, being personally present in open Court and represented by his attorney of record, Joseph I. Bulger, and the Court having heard testimony and considered evidence offered in support of said Petition for the Rule to Show Cause in the above entitled cause, and in support of the Answer to said Petition for said Rule to Show Cause, and being now fully advised in the premises, the Court finds:

(1) That there was entered in the above entitled cause on the 12th day of April, A. D. 1945, *nunc pro tunc* as of April 12th, 1945, a judgment in mandamus, which judgment was in words and figures as follows:

"This cause coming on for hearing on the verified Mandamus of the above named petitioners and relators, filed herein on April 5, 1945, and also on the written Motion of the above named defendants to strike and dismiss the said petition, filed herein on April

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11, 1945, and on the written Answer of the above-named defendants, filed herein on April 12, 1945;

"And the Court having heard the evidence presented on behalf of the petitioners, and having duly heard the arguments of counsel for the petitioners, and likewise the arguments of counsel for the defendants; and the Court being fully advised in the premises, the Court now finds:

402 1. This Court has jurisdiction of the parties hereto and of the subject matter of the cause.

2. The Court finds the issues for the petitioners and against the defendants.

3. The Court particularly finds that the petitioners above named and each of them are entitled to a peremptory Writ of Mandamus, as prayed in the Petition, against the defendants and each of them.

"Wherefore, it is ordered and adjudged by the Court that a peremptory Writ in Mandamus issue forthwith out of the office of the Clerk of this Court, directing and commanding the defendant Ralph E. White, as Clerk of the Village of Lyons, County of Cook and State of Illinois, and as the pretending and acting and *pro tem* Clerk of the said Village, and against the defendant Joseph F. Janda (insofar as he also is or may be the acting or *pro tem* Clerk of the said Village of Lyons), and each of them, forthwith to do and perform the following:

A. The said defendants are hereby ordered, directed and commanded to print and cause to be printed the names of the petitioners, and each of them, on the ballots (both official ballots and sample ballots) to be printed and furnished by the Clerk of the Village of Lyons for the Village election to be held in the said Village on, to-wit, April 17, 1945, as candidates of, and under the Party caption or label of Regular Peoples Party.

B. More particularly, the said defendants are ordered, directed and commanded to print or cause to be printed the said ballots last above mentioned and described and in the manner provided by law, in such fashion as to

403 show on the said ballots (among other things) the following under one party column or label:

| Party Label | Regular Peoples Party |
|---|---|
| For Village President | Lyman F. Martin |
| For Village Clerk | Cecil Grgurich |

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| | |
|---|---|
| For Village Trustee | Joseph Cerny |
| For Village Trustee | Henry J. Metz |
| For Village Trustee | John F. Gazarek |
| For Police Magistrate | Frank J. Kucera |

C. And that all of such printing on the said ballots above mentioned and described shall be done and performed by the said defendants in accordance with the Certificate of Nomination heretofore duly filed by the said Regular Peoples Party of the Village of Lyons, with the Village Clerk of the said Village of Lyons, as shown by the said Certificate of Nomination duly presented to this Court on the hearing of this cause.

"And it appearing to this Court on the hearing of this cause that the said defendants or either of them, acting as said Village Clerk of the Village of Lyons, have heretofore printed or caused to be printed certain pretended or proposed ballots (both official ballots and sample ballots) for the said Village election on, to wit, April 17, 1945, upon which ballots the names of the said petitioners and each and all of them are entirely missing.

"Now therefore, the said defendants, and each of them (so far as either of them may act or purport to act as said Village Clerk) are ordered, directed and commanded as follows:

A. The said defendants are ordered and directed and commanded forthwith to cancel and destroy all such 404 ballots as may have heretofore been printed (as above set forth) for the said Village election on April 17, 1945.

B. The said defendants are specifically and particularly ordered, directed and commanded not to permit any of the ballots last above described to be used by any precinct voting official or by any voter in the said Village of Lyons at the said election.

C. But on the contrary, the said defendants, are ordered, directed and commanded to print and provide to all precinct voting officials, and for the use of all voters, at the said Village election on April 17, 1945, ballots (both official ballots and sample ballots) with the names of the petitioners thereon as hereinbefore ordered and directed in this Judgment in Mandamus.

"And the defendants and each of them are further directed, ordered and commanded in all respects to recognize

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and acknowledge and use and respect the Certificates of Nomination of the petitioners and each of them as if no so-called 'Objections' had ever been presented against the said Certificates of Nomination of the Petitioners or any of them.

"All of which the defendants shall do and perform in accordance with law; and for the failure to do any of the things or acts hereinabove ordered, the said defendants and each of them shall suffer such penalties as the law may provide.

"And it is further ordered that the Clerk of this Court shall forthwith, and by special messenger, return to the Village Clerk of the Village of Lyons, and leave with the said Clerk the original Certificates of Nomination of the petitioners herein, heretofore impounded by order 405 of this Court on, to-wit, the 10th day of April, 1945.

"Entered April 13, 1945, *nunc pro tunc* as of April 12, 1945.

(Signed) Joseph A. Graber,
*Judge, Superior Court of Cook County.*

(2) The Court doth further find that the respondent, Ralph E. White, was the Village Clerk of the Village of Lyons between the period from the filing of the Mandamus suit in this proceeding and up to and including the 17th day of April, A. D. 1945.

(3) The Court doth further find that immediately after the entry of said Judgment for Mandamus, diligent efforts to serve upon the respondent, Ralph E. White, a certified copy of said judgment order were made by and in behalf of the petitioners herein, but that the said Ralph E. White secreted himself and absconded from the Village of Lyons and did not appear at his home from the entry of said order on April 13th, 1945, until after the closing of the polls at the Village election at 5:00 o'clock P. M. on the 17th day of April, A. D. 1945, and did not appear at his usual place of employment between the 13th and 17th days of April, A. D. 1945.

(4) The Court doth further find that said Ralph E. White, between the 13th day of April, A. D. 1945, and the 16th day of April, A. D. 1945, caused to be served a Notice of Appeal through his attorney, and also signed a purported defective and improper so-called appeal bond with

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his individual signature thereon, praying an appeal from said mandamus order and that he should properly be chargeable with notice of said mandamus judgment
406 and each and all and every of the provisions thereof.

(5) The Court doth further find that said respondent, Ralph E. White, absented and secreted himself for the deliberate purpose of avoiding the service of a certified copy of said mandamus judgment upon him, and that due diligent search and inquiry were made to find said respondent Ralph E. White by and in behalf of said petitioners, and diligent efforts were made for and in behalf of the petitioners to serve a certified copy of said mandamus judgment upon him, all of which were unsuccessful because of the respondent's own acts in secreting and hiding himself until after 5:00 o'clock P. M. on the 17th day of April, A. D. 1945.

(6) The Court doth further find that said Ralph E. White, as the duly elected Clerk of the Village of Lyons, County of Cook and State of Illinois, did not comply with said mandamus judgment or any part thereof, and that such failure to comply with said mandamus judgment was willful and contemptuous as alleged in the Petition for the Rule to Show Cause, and that respondent, Ralph E. White, had ample opportunity to comply with the terms and provisions of said judgment order but that willfully and in contempt of this Court failed and refused so to do.

It is therefore ordered that the respondent, Ralph E. White, is guilty of willful contempt of this Court for his willful failure to:

(a) Print or cause to be printed the names of the petitioners, and each of them, on the ballots (both official ballots and sample ballots) to be printed and furnished by the Clerk of the Village of Lyons for the Village election
407 to be held in the said Village on, to-wit, April 17, 1945, as candidates of, and under the Party caption or label of Regular Peoples Party:

(b) Print or cause to be printed the said ballots last above mentioned and described, and in the manner provided by law, in such fashion as to show on the said ballots (among other things) the following under one party column or label:

| Party Label | Regular Peoples Party |
|---|---|
| For Village President | Lyman F. Martin |

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| | |
|---|---|
| For Village Clerk | Cecil Grgurich |
| For Village Trustee | Joseph Cerny |
| For Village Trustee | Henry J. Metz |
| For Village Trustee | John F. Gazarek |
| For Police Magistrate | Frank J. Kucera |

(c) Printing on the said ballots to be done and performed in accordance with the Certificate of Nomination heretofore duly filed by the said Regular Peoples Party of the Village of Lyons, with the Village Clerk of the said Village of Lyons, as shown by the said Certificate of Nomination duly presented to this Court on the hearing of this cause;

and that said respondent, Ralph E. White, in violation of and contrary to the terms and provisions of said mandamus judgment did not perform the following acts nor any or either of them as in and by said mandamus judgment he was ordered, directed and commanded so to do, namely:

(1) Cancel and destroy forthwith all ballots which may have been printed prior to the entry of said mandamus judgment for the Village Election on April 17th, 1945;

(2) Not to permit any of the ballots last above described to be used by any precinct voting official or by any voter in said Village election;

408 (3) Print and provide to all precinct voting officials, for the use of all voters at said Village election on April 17, 1945, ballots (both official ballots and sample ballots) with the names of the petitioners thereon;

(4) Recognize and acknowledge and use and respect the Certificates of Nomination of the petitioners and each of them as if no so-called "Objections" had ever been presented against said Certificates of Nomination of the petitioners or any of them;

and that the said respondent, Ralph E. White, is guilty of willful contempt of this Court for the reasons above set forth herein.

It is therefore further ordered that said respondent, Ralph E. White, be taken into custody by the Sheriff of the County of Cook and State of Illinois, and that he be and he is hereby committed to the County Jail of Cook County, Illinois, for a period of six months from this date or unless he shall be sooner discharged by due process of law.

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To the entry of which order the respondent, Ralph E. White, objects and excepts and prays an appeal to the Appellate Court for the First District of Illinois, which appeal is hereby allowed upon said respondent, Ralph E. White, filing his good and sufficient appeal bond in the sum of Five Thousand Dollars with surety to be approved by this Court.

It is further ordered that the mittimus in this proceeding shall be stayed until 10:30 A. M. June 1st, 1945.

Enter this 1st day of June, A. D. 1945.

Joseph A. Graber,
*Judge of the Superior Court of Cook County.*

ANSWER OF RALPH E. WHITE TO PETITION FOR RULE TO
409 SHOW CAUSE FILED MAY 31, 1945.

Now comes Ralph E. White, respondent herein, and files his separate Answer to Plaintiffs' Rule to Show Cause, and says:

1) That this Respondent, insofar as the said Rule affects him and answering the leading or first paragraph of said Rule denies that he refused or disobeyed, or was or has been in defiance of any Judgment in Mandamus, or Judgment Order, entered by this honorable Court on April 13th, 1945, *nunc pro tunc* as of April 12, 1945, or any Writ of Mandamus issued pursuant to said order or judgment, as alleged in said rule, but states the fact to be that no Mandamus judgment, or judgment order or writ of mandamus issued pursuant to said order, was ever served upon this respondent personally or otherwise, in any shape, form or manner, upon which this respondent could have acted, and answering further avers that he was not in court on the aforementioned dates.

2) This respondent, answering paragraph (a) of said Rule denies that this respondent refused to forthwith print the names of the petitioners herein upon the official ballot to be used in the Village Election to be held on April 17, 1945, in the Village of Lyons for the election of one President, one Village Clerk, three Trustees and one Police Magistrate, and states the fact to be that this respondent was never served with the Court's judgment order, or mandamus judgment, or writ of mandamus pursuant to said
order or judgment, personally or otherwise, at any
410 time before April 17, 1945, in any shape, form or man-

ner, and answering further avers that this respondent had no notice thereof.

3) This respondent, answering paragraph (b) of said rule, denies that he refused to destroy ballots which had already been printed prior to the filing of this proceedings, showing only the candidates of the Regular Progressive Citizens Party and not the names of the Petitioners herein as candidates of the Regular Peoples Party, and that the same be not used in the Village election but states the fact to be that in this connection this respondent was never served with, personally or otherwise, either a copy or original, either certified or otherwise, the order of this Court entered on April 13, 1945, in any shape, form or manner, nor any writ of mandamus pursuant to said order.

4) This respondent, answering paragraph (c) of said Rule denies that he refused to print new official ballots to be used in the election above mentioned, showing the names of the Petitioners herein as candidates of the "Regular Peoples Party", and to deliver the same to judges of election for use by the voters of the Village of Lyons at the said election on the 17th day of April, A. D. 1945, for the reason that this respondent was never served personally with any certified copy or otherwise of this honorable Court's order of April 13, 1945, had no notice thereof, and was not in court the day of its entry.

5) This respondent denies that he failed, neglected and refused to comply with said Mandamus order, and answering further denies the averments contained in each of paragraphs (1), (2) and (3) but states the fact to be that this respondent was never served personally or
411 otherwise with a certified copy or original of said judgment order, mandamus judgment, or writ of mandamus, pursuant to said order in any shape, form or manner.

Answering paragraph 3, page 3, of said Rule this respondent, insofar as the allegations contained therein which purport to affect him, admits the specimen ballot attached to said rule is a copy authorized printed by this respondent but denies that the names of the petitioners were omitted purposely and in defiance of any order of his honorable Court but states the fact to be that the same was printed in accordance with the law as in that case made and provided and for reasons which appear in respondent's an-

swers in paragraphs 1, 2, 3, 4 and 5, hereof and for reasons which appear more fully hereinafter; and

This respondent admits, insofar as the allegations concern him, that he caused to be printed an official ballot for use in the Village election, which was held in the Village of Lyons on April 17, 1945, as alleged in paragraph 2, page 3, of said Rule but denies that the same was in disobedience or defiance of any order of this Court for the reasons that no judgment order, mandamus order, or writ of mandamus pursuant to any order of court was served upon this respondent personally or otherwise on or before April 17, 1945.

And answering the third paragraph on page 3 of said rule, this respondent admits that the official ballots were printed containing only the name of one party and omitting the names of the petitioners or candidates of the "Regular Peoples Party" but deny that it was done in will-
412 ful defiance of the order of this honorable Court and in support thereof state the fact to be that this respondent was not served personally or otherwise with any certified or other copy of any order of this Court in any shape, form or manner, or a writ of mandamus pursuant thereto.

5-A) This respondent further avers that said rule to show cause should be dismissed and discharged for the reason that no mandamus order or mandamus judgment or writ issued in pursuance to said order was ever served upon this respondent in conformity with Rule 18 of this honorable Court.

6) That until April 30, 1945, he was the duly elected, qualified and acting Village Clerk of the Village of Lyons, Cook County, Illinois; that this allegation of facts is also stated in the answers to the mandamus petition herein; that he was elected to said office in April of 1941 and qualified and assumed the duties of said office on May 1, 1941; that he has functioned as such officer since his said election, not having at any time abandoned, resigned or relinquished the duties thereof until April 30, 1945, nor has the President and Board of Trustees declared said office vacant, as can be more fully shown by the minutes of said Board of Trustees upon inspection; that this respondent is the keeper of the records and seal of said Village.

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7) That this respondent is a resident, taxpayer and a legally registered voter of said Village, County and State and for the past fifteen (15) years has resided in said Village with his wife and family.

8) That he is a regular and full time employee of the Ceco Steel Corporation in the Town of Cicero, Cook
413 County, Illinois, which corporation is at present and for the past three years has been engaged in the manufacture of war goods and materials.

9) That as such Village Clerk he hired with the consent and approval of the President and Board of Trustees Joseph F. Janda, as a part time record clerk as is provided in Chap. 24, Sec. 9-72, Smith Hurd Illinois Ann. Stat., and for no other purpose than to maintain and keep the books and records of the said office between meetings of the President and Board of Trustees; and that this was also alleged in the answer filed to the Petition in Mandamus herein.

10) That as Village Clerk he also acts as Secretary of the Local Board of Improvements and of the Zoning Board of Appeals, and has since his election and up to and including the 17th day of April, 1945, signed all ordinances, resolutions and minutes, and certified to all such documents and papers.

11) That as Village Clerk, Respondent herein alleges that the Village of Lyons, Cook County, Illinois, is not under the jurisdiction of the Board of Election Commissioners of the City of Chicago, not having adopted at any time heretofore any ordinance or resolution for the purpose of giving said Election Commissioners jurisdiction but is governed by Chap. 46, paragraph 10, of the Election Code of the State of Illinois, Smith-Hurd Illinois Ann. Stat.

12) That five (5) days before the regular Village Election of April 17, 1945, this respondent as Village Clerk posted a list of registered voters of such Village under the provisions of Chap. 46, Sec. 5-32, Election Code, Smith-Hurd Illinois Ann. Stat.

13) That pursuant to and in accordance with the
414 law as made and provided, said respondent gave notice of the Village Election to be held on April 17, 1945, by publication and posting notices in accordance with the statute as made and provided.

14) That on March 13, 1945, at 10:30 P. M., in the office

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of this respondent as Village Clerk the "Regular Peoples Party" filed Certificates of Nomination with all nomination papers, addressed to Ralph E. White, as Village Clerk of the Village of Lyons, and for which this respondent gave his receipt in his own proper person and under his own proper signature; a photostatic copy of said certificates of nomination and nomination papers are part of the pleadings in the above entitled cause, which pleadings are made a part hereof by reference.

15) That on March 13, 1945, at 6:00 P. M. in the office of this respondent as Village Clerk the Regular Progressive Citizens Ticket filed Certificates of Nominations and nomination papers, addressed to Ralph E. White as Village Clerk and for which respondent gave his receipt therefor in his own proper person and under his own proper signature; a copy of said certificates of nomination and nomination papers are a part of the pleadings in the above entitled cause, which are made a part hereof by reference.

16) That on the 17th day of March, 1945, by registered mail, return receipt requested, written objections in the form of a petition, with a copy thereof, were filed to the certificate of nominations and nomination papers of the "Regular Peoples Party"; a copy of said written objections are a part of the pleadings in the above entitled cause, which are made a part hereof by reference; 415 that said registered mail was addressed to this respondent as Village Clerk of Lyons, Village Hall, Lyons, Illinois.

17) That this respondent pursuant to his duty in that respect and within twenty-four (24) hours after the receipt of the aforementioned written objections transmitted, by registered mail, the Certificate of Nomination or nomination papers and the original objectors petition to the Chairman, Edmund K. Jarecki, of the Lyons Municipal Electoral Board, designated in Section 10-9 of Chap. 46, Election Code, Smith-Hurd Ann. Stat., and transmitted copies of the objectors petition to each and every candidate appearing upon the said certificate of nomination or nomination papers; a copy of this respondent's letter to the Chairman of said Electoral Board is a part of the pleadings in the above entitled cause which are made a part hereof by reference.

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18) That pursuant to receipt of said certificate of nomination or nomination papers and the written objectors petition, the Hon. Edmund K. Jarceki, County Judge, and designated by Statute to act as Chairman in lieu of the Village President, who was a candidate for re-election at the election to be held on April 17, 1945, and therefore ineligible to act on said Electoral Board, issued on March 20, 1945, due notice or call to Louis Hoffman, oldest sitting Trustee in point of service, and designated to sit upon said Electoral Board, said Hoffman not being a candidate at said election, and said Chairman also issued on March 20, 1945, due notice and call to this respondent as the Village Clerk, this respondent not being a candidate at said election, and also issued on March 20, 1945, a notice or
416 call and summons to the candidates listed upon the said certificates of nomination or nomination papers and to the objectors to appear for hearing to pass upon the objectors petition and the objections to the said Certificate of Nomination of the "Regular Peoples Party".

19) That said Electoral Board met and convened in the courtroom of the Hon. Edmund K. Jarecki, Chairman of said Municipal Electoral Board, on the 23rd day of March, A. D. 1945, at which time and place the said Edmund K. Jarecki, Chairman, Ralph E. White, respondent herein, and Louis Hoffman, oldest sitting Trustee of said Village Board, in time of service duly convened, and considered the said objections to the certificates of nomination or nomination papers and did then and there at the time and place above mentioned sustain the said objections by a majority vote of said Electoral Board; that a true and correct photostatic copy of a transcript of the things and matters done on that occasion are a part of the pleadings in the above entitled cause and which are made a part hereof by reference; all done and performed in accordance with Chap. 46, Sec. 10-8, 10-9, 10-10, of the Election Code, Smith-Hurd Illinois Ann. Stat.

20) That at said hearing the candidates and relators herein, Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek, Frank J. Kucera, and their attorneys, Urban Lavery and Frank J. Lexa, appeared personally and participated in said proceedings and made their defense to said objections; and that the objectors, Karl Schimmelphennig and O. H. Felton, also

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appeared to urge their contentions.

417 21) That the entry of said ruling and findings were by request of the attorneys representing the candidates of the "Regular Peoples Party" adjourned to March 27, 1945, 10:30 A. M. and to reconvene at the same place; that on the last above said date the said Electoral Board recorded their ruling and decision all of which appear in the transcript of the stenographers minutes; a true and correct copy thereof are a part of the pleadings in the above entitled cause and which are made a part hereof by reference, and attached hereto is a true and correct copy of the ruling and decision of said Electoral Board as sent to each candidate and to the Village Clerk marked Exhibit "X" 1 to "X" 5.

22) That an action in Mandamus was begun in the Circuit Court of Cook County entitled #45C-2198, wherein Hon. Edmund K. Jarecki, as Chairman of said Electoral Board, was made defendant, the other two members being purposely omitted, wherein said proceedings said Edmund K. Jarecki was represented by the State's Attorney of Cook County, who made no defense to said action, but confessed the allegations of said Mandamus Petition; whereupon the Court (Hon. Harry Fisher), entered an order in said proceedings in words and figures is a part of the pleadings in this cause and which are made a part hereof by reference thereto.

23) That pursuant to said order the said Edmund K. Jarecki refused to participate or function as a member of said Electoral Board and declaring said board illegally constituted.

23-A) That Circuit Court had no power to enter such an order, as it was interfering with an Electoral Board created by Statute and part of the executive branch of

418 the State government; and that said order is null and void.

24) That thereupon the said remaining members of said Municipal Electoral Board finished the business before them and entered their rulings and findings of said Electoral Board and sent certified copies thereof to each and every candidate of the "Regular Peoples Party", and to each of the objectors and to the Village Clerk; a true and correct copy of said ruling is a part of and included in the pleadings in the above entitled cause, which findings are

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made a part hereof by reference, all done and performed pursuant to and in accordance with the provisions of Chap. 46, Sec. 10-10, (Election Code) Smith-Hurd Illinois Ann. Stat.

24-A) That pursuant to Judge Fisher's Mandamus Order, the relators had the said Court in that cause—#45C-2198—issue its rule to show cause why Ralph E. White and Louis Hoffman, members of the Lyons Municipal Electoral Board, should not be held in willful contempt.

25) That upon hearing held on the 6th day of April, 1945, Judge Fisher, of the Circuit Court, dismissed the rule and discharged the respondents upon the sound ground that he lacked jurisdiction of the parties and of the subject-matter.

26) That thereupon, upon the disposal of said objections to said ticket, it became and was the duty of this respondent to proceed with the printing of the ballots and printing, posting and distributing the specimen ballots for said election and this respondent, as Village Clerk, as the officer whose duty it is under the law pertaining to municipal elections, proceeded to carry out said duties.

27) That on the 7th day of April, 1945, specimen 419 ballots were printed; that notices to Judges and Clerks of Elections were posted in the several precincts in the said Village; and that official ballots were ordered printed on the 7th day of April, 1945, and delivered to him on the 9th day of April, 1945, all in accordance with the Statutes as made and provided:

28) That on the 5th day of April, 1945, a summons was served upon this respondent in the above entitled cause; that counsel was engaged and motions to dismiss and strike said Petition for Mandamus were filed in respondents' behalf; that said motion was overruled and answer was then made to the petition, all of which more fully appear in the files and records in this cause.

28-A) Respondent further alleges that this honorable Court has power to disregard the proceedings of the said Electoral board and hold the same for naught, or to disregard the provisions of Chap. 46, Sec. 10, Smith-Hurd Illinois Ann. Stat., pertaining to said Electoral board.

29) That notwithstanding that this respondent has performed his official and statutory duties as Village Clerk, all

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in accordance with the law as in each instance it is provided by the Statutes, Chap. 46 (Par. 9 and 10, Smith-Hurd Ill. Ann. Stat.) of the State of Illinois; but that this honorable Court has assumed jurisdiction of the subject-matter where it has none, and by its order of April 13, 1945, which was never served upon this respondent, commanded this respondent and Joseph F. Janda, also a respondent herein,
to disregard the statutes.

420 29-A) This respondent denies any willful intention to disobey any order of this Court.

29-B) This respondent denies any willful defiance to the Court's order.

29-C) That notwithstanding that no mandamus order or judgment order, or writ issued in pursuance to said order, was ever served upon this respondent personally, that the situation presently is such that the ruling and decision of the Electoral Board has been and is still in force, the same not having been changed, altered, modified nor rescinded, in any action at law or otherwise, and an order of this Court which as stated above was never served upon this respondent, but to disregard the one (which is statutory and binding) and to carry out the other (which was not served), is to commit an unlawful act with only an implied judicial sanction.

31) Respondent further answering alleges that the relators in this cause have invoked the rulings and decision of the Lyons Municipal Electoral Board; that on March 22, 1945, these same relators filed their petition in mandamus in the Circuit Court, where they had plenty of time to urge that court what is being urged in this court; and now urge upon this court the performance of a series of acts which as to the time element was a physical impossibility; the date when said order was entered was Friday, April 13, 1945, on April 12, 1945, it was necessary to have the specimen ballots not only printed but posted together with the instruction at each precinct; Saturday, April 14, was a half-holiday, Sunday, April 15, 1945, was a holiday and
Monday, April 16, 1945, the official ballots had to be
421 delivered to the judges of election for the election the
next day, Tuesday, April 17, 1945, and this respondent further says that even if said order was served on Friday evening, March 13, 1945, it would have been a physical impossibility to print again 4,000 official ballots and 2,000

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specimen ballots of election, and to perform the acts ordered without creating confusion and disorder, and its effect would be to halt the holding of an election.

32) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon the respondent personally or otherwise, this respondent further alleges that this court's order of April 13, 1945, is null and void as it is a judicial interference with the executive branch of the State government in that it is a judicial review of the rulings and findings of a statutory board, equal in dignity with the judicial and legislative branches and whose acts of discretion are not reviewable in an action of mandamus.

33) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon this respondent, said order is null and void as this Court lacks jurisdiction of the subject matter herein.

34) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, this respondent says that said mandamus order or mandamus judgment is null and void and of no effect as Chap. 46, Sec. 10-10 of the Election code provides as follows:

The electoral board shall take up the question as to whether or not the certificate of nomination or nom-
422 ination papers are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nomination papers on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final.

35) Notwithstanding that no mandamus order or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, this respondent alleges that he is duty bound under the law to: "shall abide by and comply with the ruling so made to all intents and purposes", and this honorable court cannot undo or set aside or interfere with said Electoral Board rulings, and decision herein the premises.

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36) Notwithstanding that no mandamus order or judgment or mandamus writ issued in pursuance to said order, this respondent alleges that said order is null and void, not erroneous, in that it attempts to hold for naught the rulings of the Lyons Municipal Electoral Board which power is not vested in this honorable court in mandamus proceedings.

37) Notwithstanding that no mandamus order, or mandamus judgment, or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, said order is null and void as said order flows from a petition which upon its face shows the duty to be enforced is dubious, uncertain and ambiguous.

423 38) Notwithstanding that no mandamus order or mandamus judgment, or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise, said order is null and void in that it compels the performance of an illegal act on the part of this respondent; that said order is null and void in that it directs the performance of a series of acts contrary to and inconsistent with the rulings of the said Electoral Board upon whom the statute has placed the final decision. (Chap. 46, Sec. 10-10.)

39) Notwithstanding that no mandamus order or mandamus judgment, or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise the said order is null and void in that this honorable court has no power by mandamus to review the decision made final by statute, of officers having power to decide purely political questions.

40) Notwithstanding that no mandamus order or mandamus judgment or writ issued in pursuance to said order was ever served upon this respondent personally or otherwise the said order is null and void as this court had no power to delegate the duties of Ralph E. White, the Village Clerk and respondent herein to Joseph F. Janda, also a respondent herein, when Janda held no office of authority in said village, but having so delegated the duties, and having made the act to be performed not jointly but in the alternative it fixes no positive, clear, certain or specific duty upon either respondent.

42) This respondent, herein adopts and incorporates as a part hereof all the matters and things alleged in the

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424 respondents answers to the petition in mandamus.

43) This respondent, herein adopts and incorporates as a part hereof the answers filed herein by Joseph F. Janda respondent herein.

44) That nothwithstanding that no judgment order or mandamus order or any preemptory writ of mandamus issued in pursuance to said order this respondent further says that any invasion by this court of the executive department of the State government is not merely an erroneous decision action or order, but is wholly void, of no effect and not binding on any person.

45) That notwithstanding that no mandamus order or mandamus judgment or preemptory writ of mandamus issued in pursuance to such order was ever served upon this respondent personally or otherwise, this respondent says that: Article III of the Constitution of the State of Illinois provides as follows:

ARTICLE III.

Distribution of Powers.

Departments of Government

"The powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these department shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

And this respondent shows that as Village Clerk of the Village of Lyons he is an officer of the executive de-

425 partment of the Constitutional government of the State and as such while in the due exercise of his legal duties he is not amendable to the control or direction of the judicial department of the government, and that the jurisdiction of the courts of Illinois does not extend to modify, change or excuse the statutory duties of municipal officials, nor have the courts of this State any power or jurisdiction to compel a municipal officer of the executive department to take or do an illegal act or an act in violation of his sworn duty or his official oath.

46) This respondent answering said rule further says: That mandamus has no jurisdiction to create new duties nor enforce illegal acts but only to enforce the performance

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of legal duties where the performance of legal duties is refused.

47) The respondent answering said rule further says that when the said Lyons Municipal Electoral Board filed its ruling and decision upon said objections to the said "Regular Peoples Party" certificate of nominations or nomination papers with the Village Clerk, it became the duty of this respondent to prepare the official ballots for said election in accordance with the ticket legally filed, and furnish them for the judges of election of said village pursuant to the statute, and this was the duty under the law imposed upon this respondent.

48) This respondent answering said rule further alleges that this court was advised by the pleadings on file herein, which fact stood admitted, that the objections to the said certificates of nomination or nomination papers of the "Regular Peoples Party" had been sustained by the final action of the said Lyons Municipal Electoral Board 426 and that pursuant to the decision of said Electoral Board no such "Regular Peoples Party" existed for purposes of said election.

49) Answering said rule further this respondent alleges that no legal duty rested upon him as Village Clerk to print a ballot for said election with the names of the candidates of the said "Regular Peoples Party" ticket and that this court had no jurisdiction to enter any mandamus order whereby to require this respondent to violate the election laws in such case made and provided and to do an act illegal and in violation of law.

50) Notwithstanding that no mandamus order, mandamus judgment or preemptory writ of mandamus issued in pursuance to said order was ever served upon this respondent and further answering said rule says:

That in entering said mandamus order the court invaded the jurisdiction of the executive department the government and the order directing the issuance of said writ to destroy ballots already printed and to print new ballots with "Regular Peoples Party" ticket thereon is void and of no force or effect.

Wherefore, this respondent, by reason of the above and foregoing answers prays this honorable court for an order dismissing the rule herein described.

Ralph E. White,
*Respondent.*

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427 Oath of Ralph E. White, that he has read the above and foregoing answers by him subscribed; knows the contents thereof and, states the same to be true in substance and in fact.

Exhibit to the answer of Ralph E. White to the rule to show cause being proceedings before the Municipal Officers Electoral Board of the Village of Lyons:

In Re Matter of Objections to the Certificate of Nomination of the "Regular Peoples Party" for Village Officers of President of the Board of Trustees, Village Clerk, Three Trustees and Police Magistrate for the Village of Lyons, Cook County, Illinois.

RESOLUTIONS.

Whereas, the Electoral Board of the Village of Lyons, consisting of

Hon. Edmund K. Jarecki, Chairman
Mr. Ralph E. White and
Mr. Louis Hoffman, Members

convened on March 23, 1945, at 10:00 o'clock A. M. in the courtroom of said Hon. Edmund K. Jarecki to consider the objections of Karl Schimmelphennig and O. H. Felton to the Certificate of Nomination of the Regular People's Party of the Village of Lyons; and

Whereas, at the said hearing a vote was taken on the question of sustaining the objections of said Karl Schimmelphennig and O. H. Felton to the Certificate of nomination of the Regular People's Party which
428 said vote was duly recorded and shows that the Hon. Edmund K. Jarecki, Chairman, voted against sustaining said objections and that Mr. Ralph E. White and Mr. Louis Hoffman voted for sustaining said objections; and

Whereas, Mr. Urban A. Lavery and Mr. Frank J. Lexa appearing on behalf of the Regular People's Party challenged the right of Mr. Ralph E. White to act as a member of the above named Electoral Board, alleging as the reason for their challenge that said Mr. Ralph E. White was not the Village Clerk of the Village of Lyons, having resigned and having been

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sworn in as the Chief of Police of said Village; and

Whereas, the Hon. Edmund K. Jarecki has returned all certificates of nomination or nomination papers and other documents to the Village of Lyons and has declared this Electoral Board dissolved; and

Whereas, the said Mr. Ralph E. White and Mr. Louis Hoffman have examined the minutes of the Board of Trustees of the Village of Lyons and have found that the said Mr. Ralph E. White has not resigned, but that he is the duly elected, qualified and acting Village Clerk of the Village of Lyons, and as such is a duly qualified member of the Electoral Board of the Village of Lyons; and

Whereas, no testimony was adduced at the hearing of this Electoral Board on March 23, 1945, touching upon the election and qualification of said Mr. Ralph E. White as Village Clerk, and the Board having here and now considered the said Certificates of Nomination and the objections made thereto and the evidence offered in support of said objections, and having heard
429 the arguments of counsel and being fully advised;

Now, Therefore, Be It and It Is Hereby Resolved and Ruled, by the Electoral Board of the Village of Lyons, as follows:

1) That it has jurisdiction to hear and consider the said objections to said Certificate of Nomination.
2) That the "Regular People's Party" is an established political party within the Village of Lyons, Cook County, Illinois.
3) That the population of the Village of Lyons is in excess of six thousand (6,000) persons.
4) That the Certificate of Nomination filed by the "Regular People's Party" does not comply with Article X of the Election Code, the Illinois Revised Statutes 1943, governing the nomination of candidates for established political parties, and is therefore null and void.

Wherefore, This Board Further Resolves and Rules:

1. That the Electoral Board of the Village of Lyons which convened on March 23, 1945, as above stated was in all respects legal and was qualified to act.

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2. That the vote taken at the hearing of March 23, 1945, was legal and binding.

3. That the findings of the Electoral Board at the hearing on March 23, 1945, were legal and binding and should be entered upon the records of this Board.

4. That the Hon. Edmund K. Jarecki, as Chairman of said Electoral Board has refused
430 to so enter said vote and findings and transmit copies thereof to the candidates of the Regular Peoples Party, the Village Clerk of the Village of Lyons, and to the objectors to said certificates of nomination, as provided by law, and refuses to further participate herein.

5. That having failed to do so, Mr. Ralph E. White be and he is hereby authorized to make and enter such findings upon the records of this Electoral Board and to transmit them to candidates of the Regular Peoples Party, to the Village Clerk of the Village of Lyons and to the objectors to said certificates of nomination.

6. That this Board now adjourn sine die. Adopted this 27th day of March, A. D. 1945.

..... *Chairman* *Member*

(Signed) Ralph E. White

..... *Village Clerk* *Member*

(Signed) Louis E. Hoffman

..... *Trustee* *Member*

Answer of Joseph F. Janda, respondent to relators petition for rule to show cause filed May 31, 1945:

Now comes Joseph F. Janda, respondent herein, and files his separate answers to the Relators Petition For Ruleto Show Cause and says:

431 1) That this respondent adopts and incorporates herein as though fully set forth the Answers of the Respondent Ralph E. White, filed in this proceedings as part of his answers to the relators petition for rule to show cause.

2) Answering said rule further respondent herein alleges that he is a duly registered and qualified voter and

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resident of the Village of Lyons, Illinois, and that for the past several years he has resided therein with his wife and where he owns his own home.

3) Answering said rule further respondent alleges that he is now and has been for more than 15 years an employee of the Illinois Bell Telephone Company at Chicago, Illinois.

4) Answering the said rule further this respondent alleges that at no time prior to April 17, 1945, was this respondent the duly elected and qualified Village Clerk of said Village of Lyons; or that he prior to that aforesaid date was appointed acting or pro tem clerk in the place and stead of Ralph E. White, respondent herein, by the President and Board of Trustees of said Village and answering further states the fact to be that he was employed as a part time record clerk in the Office of the Village Clerk Ralph E. White, respondent herein, and that among his duties was to attend the Board meetings and take the minutes of said meetings, make copies thereof and distribute the same to the President and members of the Board of Trustees for their convenience; and denies that he was in any way acting as Village Clerk but that his duties were under the supervision of the regular Village Clerk.

432 5) Answering the said rule further this respondent denies that it ever was his duty to cause to be done or to do any act or acts pertaining to the Village election of April 17, 1945, as alleged in the said Petition for rule to show cause but states the fact to be that he never had authority to do the things alleged in said rule while in the employ of the said Clerk or Village pertaining to the said election.

6) Answering said rule this respondent further denies that it was his duty to:

(a) cause the names of the relators to be printed upon the official or specimen ballot to be used in the Village election of April 17, 1945;

(b) destroy any ballots printed prior to the entry of said Mandamus order showing only the names of the candidates of the "Regular Peoples Party" ticket;

(c) print new official ballots with the names of the petitioners as candidates of the "Regular Peoples Party" and to deliver the same to Judges of election for use by the voters of the Village of Lyons at the election of April 17, 1945.

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7) Answering paragraph (1), page (2) of said rule this respondent further denies that he refused, neglected or failed to comply with any Mandamus order, Mandamus judgment or Writ of Mandamus issued pursuant to said order and states the fact to be that he was never served with such papers and answering further it was not the duty of this respondent to do the things directed in said order notwithstanding that no such order was ever served upon this respondent and further this respondent has
433 no power to or authority to perform such acts as he at that time was not the Village Clerk and to carry out the purported directives alleged in the said rule would be a rank usurpation of the office and duties of the regularly elected and acting village clerk as the respondents only status at that time was one of employee as part time record clerk.

8) Answering paragraphs (2) and (3) of page (2) of said rule this respondent denies that he could without usurping the office and duties of the Village Clerk Ralph E. White, respondent herein, order or have printed the official and sample ballots or destroy the ones already printed, or order any new official election ballots printed as alleged in said rule and then have the same delivered to the judges of election as this respondent had no such power or authority so to do in the first instance or even order the names of the petitioners placed upon said ballots for the election of April 17, 1945, as such acts would be usurpation by this respondent of the office and duties of the Regular Village Clerk.

9) Answering the said rule and answering further and notwithstanding that this respondent was never served with any order, Mandamus judgment or Writ of Mandamus issued pursuant to such order this respondent shows that said order is not binding upon him as the same is to an officer designated by law to perform the specific duty and which officer was occupying said office of Village Clerk at the time in question and as to this respondent the said order is not erroneous but void and of no effect as this respondent owed the petitioners no duty in that behalf.

10) Answering said rule this respondent alleges further that upon information and belief and upon such
434 information and belief states the fact to be that no peremptory Writ of Mandamus was ever issued pursuant to the Court's order out of the office of the Clerk

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of the Superior Court under the seal of this honorable court.

11) Answering said rule this respondent further alleges that notwithstanding that no order, Mandamus order, Mandamus judgment or Writ of Mandamus was issued pursuant to said order of April 13, 1945, the said order is not merely erroneous but void as it is an interference by the judicial department of the government with the rulings and decisions of a statutory board created by the legislature but an arm of the Executive branch of the State government and which judicial interference is limited by Article III of the Constitution of the State of Illinois.

12) This respondent denies any willful intent to disobey the order of this court.

13) This respondent denies any act or acts on his part performed or omitted in defiance of the orders of this Court.

Wherefore this respondent by reason of the above and foregoing answers by him made prays for an order of this court dismissing the rule herein described.

*Joseph F. Janda*
*Joseph F. Janda—Respondent*

State of Illinois }
County of Cook } ss.

Joseph F. Janda, being first duly sworn upon oath deposes and says that he is a respondent herein to the Petition for rule to show cause; that he has read the above
435 and foregoing answers by him made to said rule; knows the contents thereof and states that the same are true in substance and in fact.

*Joseph F. Janda*
Joseph F. Janda

Subscribed and sworn to before me this 29th day of May, A. D. 1945.

Olga V. Marsh,
(Seal) *Notary Public.*

Order entered May 31, 1945, extends time to file report of proceedings to and including June 17, 1945.

Order entered June 8, 1945, approving report of trial proceedings in the original mandamus proceedings.

Notice of appeal filed June 1, 1945 in proceedings for contempt, and from all of the provisions thereof and on appeal, respondents will ask the Appellate Court to reverse said judgment of contempt. Appended receipt, June

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1, 1945, of Urban A. Lavery and Frank J. Lexa, for copy of notice of appeal and copy of notice of filing notice of appeal.

Notice of filing notice of appeal addressed to Urban A. Lavery and Frank J. Lexa, attorneys for relators.

Praecipe for record in contempt proceedings filed June 8, 1945, and notice of filing praecipe for record by mailing copies to attorneys for relators.

Praecipe for record in original mandamus case filed April 16, 1945, calls for a complete transcript of record.

436 Receipt for praecipe for record in original mandamus proceedings on April 16, 1945, by attorneys for plaintiff.

APPEAL BOND

Know All Men By These Presents, that, we, Ralph E. White of Cook County, Illinois as principal and Glens Falls Indemnity Company of Glens Falls, New York as surety, are held and firmly bound unto the People of the State of Illinois in the penal sum of Five Thousand Dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly, severally and firmly by these presents.

Witness Our Hands And Seals this 1st day of June A. D. 1945.

The Condition Of The Above Obligation Is Such that whereas, the said People of the State of Illinois did on the 1st day of June A. D. 1945 in the Superior Court of Cook County, in the State aforesaid, and of the May Term thereof, A. D. 1945 recover a judgment of Contempt of Court against the said Ralph E. White wherein and whereby the said Ralph E. White was adjudged guilty of contempt of court and sentenced to the common jail of Cook County for a period of six months from which said judgment of the Superior Court of Cook County the said Ralph E. White has appealed to the Appellate Court within and for the First District of said State; and whereas, the said Superior Court has duly ordered and directed that said

437 Ralph E. White be admitted to bail upon his giving his appeal bond in the sum of Five Thousand Dollars, conditioned that he will appear when required by the Court and will not depart the Court without leave; will abide said

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sentence in case said order is affirmed and pay all costs occasioned by said appeal.

Now Therefore, if the said Ralph E. White shall duly prosecute his appeal with effect and moreover pay all costs rendered and to be rendered against him the said Ralph E. White in case the said judgment shall be affirmed in said Appellate Court, and moreover, that the said Ralph E. White will appear at the Superior Court of Cook County as and when the Court may direct until the determination of said appeal and will not at any time depart the Court without leave, and that in case the judgment of said Superior Court is affirmed, he shall and will surrender himself to the Sheriff of Cook County to serve said sentence, then the above obligation to be void, otherwise to remain in full force and effect.

(Signed) Ralph E. White, (Seal)
(Signed) Glens Falls Indemnity, (Seal)
*Company of Glens Falls, New York, Surety*
*By L. A. Strenning, Attorney in fact.*

Approved:

Joseph A. Graber, (Signed)
*Judge Superior Court of Cook County.*

6/1/45 (Seal)
..... (Seal)

438 Notice by defendants to attorneys for Plaintiffs filed June 21, 1945, giving notice that on June 21, 1945, motion would be made to approve proceedings in the contempt proceedings with affidavit of service.

Order continuing motion to approve report of proceedings continued to June 28, 1945.

Report of proceedings filed June 28, 1945.

Proceedings of Monday, April 16, 1945. Present Urban A. Lavery, and Frank J. Lexa for Petitioners. Joseph I. Bulger for Respondents. (Mr. Bulger absent)

Mr. Lavery: I have been served with a notice of a motion.

The Court: Maybe they will be here in a few minutes—pass it. (Intermission.)

Mr. Lavery: I saw Mr. Bulger on the upper floor about five minutes ago.

The Court: They want it continued until Wednesday.

Mr. Lavery: If your Honor will indulge me.

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The Court: I am objecting to it myself.
Mr. Lavery: Yes.
The Court: Draw an order.
Mr. Lavery: An order denying the bond?
The Court: Bond denied. He better have his client in here.
Mr. Lavery: I have also served notice on Mr. Bulger on Saturday that we want his client in here today in court to examine them under the statute with respect to the bond.
I want leave to file that notice.
439 The Court: You may file that.
Mr. Lavery: I want also to file now four affidavits showing the efforts we have made to serve certified copies of the judgment order on the defendants since Friday noon. These affidavits show that they have absconded; they have not been at home; they have not been in employ; they have not been available from Friday noon until today. Efforts have been made to serve them today.
I also want leave to put in the record the purported sample of ballot which they are planning to use tomorrow. These are sample ballots of two years ago. Your Honor will note on the sample ballot the "1943". "Ralph E. White" puts the facsimile signature. Nobody evidently has dared to put on their signature.
The Court: That is all right. You can file it.
Mr. Lavery: Mark them as Exhibits 1 and 2 of this date. May I have the reporter mark them.
(Said documents so offered and received in evidence, marked Petitioners' Exhibits 1 and 2, respectively, are in words and figures as follows, to-wit:)
In the judgment it holds that this official ballot was invalid and directed that it be not used.
I suggest to your Honor that your Honor has full power under the authorities of the State of Illinois to see that that part of Your Honor's judgment is complied with.
The Court: My only judgment is that the names of the People's Party be put on this ballot; I know how to act if they are not on there tomorrow.
440 Mr. Lavery: That is true.
The Court: Just do what I am telling you. File these. You might notify Mr. Bulger that I said in the event my order is not carried out, in view of that fact I have de-

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nied the filing of the bond, not being in compliance with the Court's order.

Mr. Lavery: You want us to notify Mr. Bulger?

The Court: Notify Mr. Bulger unless their names are on the ticket his party better be here in the morning, or I will send the sheriff out to get them.

(Which were all the proceedings had in the above matter on Monday, April 16, A. D., 1945.)

Proceedings of April 17, 1945. Present: Mr. Urban A. Lavery, and Mr. Frank J. Lexa for Petitioners; Mr. Joseph I. Bulger for Respondents.

Mr. Bulger presented his motion to strike certain affidavits from the files which had been filed in the cause on April 16, 1945, on the ground that the rules of the court were not followed.

Mr. Lavery: When Mr. Bulger's motion was called yesterday morning he was not here. When his motion was called at 10:00, I waited until 10:30 when the matter was again called. Mr. Bulger must take notice of everything that develops, naturally. At that time there was an emergency situation. I had these affidavits and these two ballot forms, which I had no time to serve notice of on Mr. Bulger.

I presented them to your Honor, and your Honor had power to permit us to file the affidavits and to present the ballots and have them marked as exhibits. Therefore, I object to the motion to strike or set aside the order of yesterday.

441 The Court: I will check that rule and find out.

Mr. Lavery: Your Honor instructed me and Mr. Lexa to serve notice on Mr. Bulger of your Honor's statement. I have here a receipted copy for that notice which we served yesterday. I want to file it this morning.

The Court: That notice is not a correct statement of what I said. I said I was going to enter a rule on these men to show cause, but I don't know whether the names are on the ticket. I will enter a rule to show cause if they are not.

Mr. Lexa: They are not.

Mr. Lavery: There is a man here who attempted to vote. I want him to state what his ballot was this morning.

The Court: I am not interested in what it is right now. I will be interested tomorrow morning if they are not on the ballot. Come in tomorrow morning on this ballot, and

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at that time I can present his petition for rule to show cause if the names are not on the ballot, and I will take the necessary steps to act upon it.

Mr. Lavery: It is understood we are authorized to present a petition for a rule to show cause, serving the usual notice, and present it tomorrow morning.

The Court: Yes.

(Adjourned to April 17, 1945.)

Proceedings of April 18, 1945. Present: Mr. Urban A. Lavery and Mr. Frank J. Lexa for petitioners; Mr. Joseph I Bulger for respondents.

Mr. Lavery: I ask leave to file this petition which was served on Mr. Bulger.

442 The Court: Draw your order for rule to show cause and set it down.

Mr. Lavery: I have here a draft order for rule to show cause returnable on April 26.

Mr. Bulger: I want a little more time. I am going to try a case before Judge Allegretti on Thursday.

The Court: If you are engaged on that day let us know. Mark it April 26. If you are engaged on that day naturally we will give you more time.

Mr. Bulger: I have here the purported proceedings which I would like to present.

The Court: I will hear you on all of it next Thursday, April 26.

Mr. Lavery: Mr. Rankin wanted this presented to your Honor this morning. I don't want your Honor to do that because there is no bond here.

Mr. Lexa: They are trying to perfect an appeal without a bond.

The Court: You cannot perfect an appeal without a bond. The bond will be filed before I approve anything that is presented here. The kind of bond that was presented was a joke. I am surprised that any attorney would submit such a thing.

Mr. Rankin: This is merely the report of the proceedings.

The Court: I know what it is. I know all about it.

(Adjourned to April 26, 1945.)

Proceedings of April 26, 1945. Present Mr. Urban A. Lavery, and Mr. Frank J. Lexa for petitioners; Mr. Joseph I. Bulger for respondents.

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443 Mr. Bulger: I told your Honor the last time we appeared here that I was engaged in a trial and since my last appearance here I have been trying a case before Judge Allegretti, it is still on trial. I may finish my part today; I think it will go to the jury next week sometime. I want to ask your Honor to continue this rule—

The Court: Are these men here?

Mr. Bulger: No, sir.

The Court: Why aren't they here?

Mr. Bulger: I will tell you—

The Court: Why aren't they in here?

Mr. Bulger: Both of them are engaged in war work.

The Court: Issue an attachment for them immediately. They cannot play fast and loose with this court.

Mr. Bulger: It is only on my advice they are not here.

The Court: That is bad advice.

Mr. Bulger: I ask your Honor to give me an opportunity to bring them in tomorrow morning.

The Court: I said if you were engaged I would have to continue it; but, I did not say for that reason they would not have to come in here. They have avoided service. Mandamus was issued. They have been playing fast and loose with this court. The Court will not allow that; they are not going to make a fool out of this Court.

Mr. Bulger: I will produce them tomorrow morning.

444 The Court: I will issue the attachment now, then I know I will have them.

Mr. Bulger: Tomorrow morning?

The Court: I am issuing the attachment for them today, right now.

Mr. Lavery: Here is an affidavit of service of the rule, which I want to file.

The Court: File it.

Mr. Lavery: In addition, I assume there is something else,—the question of the return day of this attachment, I want to say to your Honor that I have to go to Minnesota to try a case all of next week. I am ready to go to bat before I go—immediately after I come back, next week, I will be available. Now, what is the immediate continuance here, the attachment I assume is returnable forthwith?

The Court: Yes, returnable forthwith. If they will find them or not I don't know.

Mr. Bulger: I will give your Honor my word I will produce these men here tomorrow morning; bring them within

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the jurisdiction of this court.

The Court: Five or six hundred employees in the Sheriff's office, out of that group we ought to get a Deputy Sheriff to locate these men.

Mr. Bulger: It is not necessary, your Honor, I will have them here tomorrow morning.

The Court: Out of a thousand police officers we may find some one who can bring them in.

Mr. Lavery: May I ask for information? Counsel holds this is continuously available before your Honor with respect to that attachment or what shall we do in the matter?

445 The Court: That is up to you?

Mr. Lavery: All right, we will be guided accordingly.

The Court: I am merely issuing an attachment. From there on it is up to you.

Mr. Lavery: We will take care of our own side of that.

Mr. Bulger: May I make one more plea? It is all my fault these men are not here. I promise the Court on my word I will have them here tomorrow morning. It is not necessary to issue an attachment for these men. They are residents of the town. They are not going to run away.

The Court: They must have run very rapidly when the mandamus was issued.

Mr. Bulger: But that is another matter. This morning I could have had these men here—

Mr. Lavery: I think they ought to be brought in under an attachment, I am stating so to the Court. They have had no lesson so far that they must do something. I think they must have a lesson.

Mr. Bulger: On my word I will deliver them here tomorrow morning.

Mr. Lavery: I object to that, your Honor.

Mr. Bulger: It is not necessary to issue an attachment. If your Honor had indicated last time that you wanted these men in court—

Mr. Lavery: He did indicate.

The Court: What do you suppose I issue a rule to show cause for?

Mr. Bulger: I have no indication that your Honor wanted these men here this morning because you said

446 you might grant me a continuance this morning—

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The Court: What I did tell you is this; that the rule would be returnable today.

Mr. Bulger: Your Honor—

The Court: That if you were actively engaged in the trial of a case, naturally I was not going to press you; I am not going to assume—that these men sit in Lyons or wherever their hiding place is and make a joke out of this court or any other court.

Mr. Bulger: Your Honor, will you stay the attachment?

The Court: Let the attachment issue. I won't stay anything. The attachment issue. I will have the men in here, if it takes the entire force of the Sheriff's office.

Mr. Bulger: It is not necessary to have the attachment issue.

May I have an opportunity—

The Court: Very nice—one of these men over the radio intimating this court was reached by somebody and then you come before this court—

Mr. Bulger: None of these men did anything like that; none of my clients did that.

The Court: Well, somebody did it. So, we will find out whether these courts have any power or not; if a couple of "fly by nights" of Lyons can play fast and loose with this court.

Draw your order for the attachment, and I will see that the Sheriff's office of Cook County will serve them, so we can eventually get these men here.

Mr. Bulger: I will have them here.

447 The Court: I will have them here myself, I won't need you. I will have them here. Draw your order, attachment issue.

Mr. Bulger: I will have them here this afternoon. Give me time to make a telephone call.

The Court: I won't temporize with these men any longer.

Mr. Bulger: I promise, if your Honor will give me time to use the telephone—

The Court: Bring them in, and deliver them to the sheriff. I will let the sheriff lock them up until tomorrow morning; if they can get them they will be locked up until tomorrow.

Mr. Bulger: That is what I want to obviate.

The Court: That is one way I am going to have them here, you may be sure.

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Mr. Bulger: Will your Honor give me a chance to call?
The Court: Prepare your order for the attachment, and the attachment will issue. That is final.
Mr. Bulger: Shall I deliver them here or to the Sheriff at two o'clock.
The Court: I don't care where you deliver them. That is up to you. It is up to the Sheriff to get them. I don't care what you do with them, because I am tired now of fooling around with this matter.
Mr. Bulger: Very well, your Honor.
The Court: As soon as the order is drawn bring it in and I will sign it.
(Which were all the proceedings had April 26, 1945.)
448 Proceedings of April 27, 1945. Present: Mr. Urban A. Lavery, Mr. Frank J. Lexa for petitioners.
The Clerk: 10:30 set matter: People of the State of Illinois *ex rel.* Martin *versus* White.
The Court: What is your name?
The Witness: Joseph Janda.
The Court: Where is your attorney?
The Witness: Mr. Bulger, he is engaged in the trial of a case.
The Court: Sit down. Let us check this up.
(Short intermission.)
The Court: Have you found out if Mr. Bulger is engaged?
Mr. Lavery: I think he is. I think you ought to talk to them.
The Court: What have you men to say for yourself?
The Witness: Sir?
The Court: What have you to say for yourself, disregarding my order?
The Witness: Your Honor—
The Court: You knew I issued a mandamus?
The Witness: No, sir.
The Court: Who is your attorney?
The Witness: Attorney Bulger.
The Court: He was here in court, wasn't he?
The Witness: Your Honor—
The Court: Was he in position to get in touch with you between 5:00 o'clock Thursday and the following
449 Monday? What were you doing during that time; where were you during that time?

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The Witness: The attorney advised me not to answer any questions unless he is in court, sir.

The Respondent: He is engaged before Judge Allegretti.

The Court: All right, if you don't want to answer my questions, all I can do is to send you to jail.

Why don't you want to answer?

The Witness: With due respect to your Honor, counsel not being present, I can't answer.

The Court: Send down for a couple of bailiffs, and I will send you to the County Jail for about six months.

A Respondent: If your Honor will continue this.

The Court: They have the right to be represented here. What day or when can we hear this?

Mr. Lexa: Can your Honor possibly dispose of it tomorrow morning?

The Court: There is no court tomorrow morning.

Mr. Lavery: We are anxious to dispose of it.

The Court: What about Monday?

Mr. Lavery: All next week I will be on trial in Duluth. If it is not disposed of this week I ask your Honor to put it over after next week, any time after Monday.

The Court: Continue it a week from Monday.

The Clerk: The 7th of May.

The Court: The 7th of May. Don't fail to be here on that day.

450 Mr. Lavery: If I am held up on the trial—

The Court: You let us know.

Mr. Lavery: All right, a week from Monday.

The Court: May 7th.

Mr. Lavery: At 10:30?

The Court: 10:30.

A Respondent: Thank you, your Honor.

Mr. Lavery: No, I don't know if there is anything on our part to say with respect to these two respondents, about their bond, and so forth, but I think it takes care of itself. The Court is more interested—

The Court: That has been taken care of. The bond is $2,000.00. That should be sufficient to hold each.

Mr. Lavery: That bond will be continued until—

The Court: That bond will stay until the Court disposes of this case.

Mr. Lavery: Thank you very much.

(Adjourned to Monday, May 7, 1945)

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Proceedings had May 9, 1945. Present: Mr. Urban A. Lavery, and Mr. Frank J. Lexa for Petitioners; Mr. Joseph I. Bulger for Respondents.

Mr. Bulger: I filed a motion to dismiss the date your Honor issued the attachment on which I want to be heard.

The Court: Suppose I let this go over.

Mr. Bulger: May I file a brief on the law?

The Court: I would be glad to get one from both of you. Continue the matter to May 21, with the understanding
451 you file your briefs in five days, and give counsel for Plaintiffs a copy and they have five days to reply.

(Adjourned to May 21, 1945)

Proceedings of May 21, 1945. Present: Mr. Lavery, Mr. Lexa, and Mr. Bulger.

Case continued to May 25, 1945.

Proceedings of May 25, 1945. Present: Mr. Urban A. Lavery and Mr. Frank J. Lexa for Petitioners; Mr. Joseph I. Bulger for Respondents.

The Court: Step up here.

In this matter, I will tell you frankly somebody is going to jail; the only thing, I don't know which man to send to jail.

For the reason, you came here Monday morning at ten o'clock, and were asked who is the clerk of that particular village? There is not any question but what if this can go on we might as well throw all the laws and constitutions and everything else in the ash can. Boys are dying all over this country in order to preserve our form of government, *and here are a bunch of gangsters, hoodlums, who take it upon themselves to tell the people* of this village that you will have to vote only for the ones we wish, nobody else; you have no right to vote for anybody except the people we wish to have on the ticket.

I think it is the most horrible situation that has ever come to the attention of this Court. The courts are powerless if that kind of a situation were allowed to go on. We might as well have no courts.

452 The situation with reference to the one point, that there was no service, is fantastic.

In view of the fact that these men after the order of mandamus was issued, submitted what they call a bond, an individual bond, some sort of a thing with no surety; their own signature on there. So that they knew, they had

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to know,—unless they are two inmates from some insane asylum, they had to know that the Court ordered them to do certain things.

Then, of course, when attempt was made, apparently, to serve the certified copies of that order, they absented themselves; knowing, certainly—one of them was supposed to be the clerk; for two or three days there was no clerk acting down there, no matter what the business of the town was, there was no clerk to take care of it; in hiding some place, using that as a subterfuge to come in later and say that they never were served with notice; they did not know anything about it.

Counsel is here; counsel was in court and signed a bond, a purported bond. And I think it is a matter for—I am very happy to have the State's Attorney here. I think it is a matter that requires plenty of investigation by the State's Attorney's office.

And with reference to whether or not in this day and age in this country when our boys are dying all over the world trying to preserve our form of government, *that a bunch of hoodlums can do what they perpetrated on the people in this* town,—I want some proof by Tuesday in order that, immediately after the hearing of the mo-
453 tion, I want these men here. Somebody is going to jail.

I want to be sure which one is chargeable with that duty of filing—receiving those names for a duly constituted ticket, and putting it on the ballot.

You have one here who is supposed to be the clerk. It appears he resigned, and then became chief of police. He acted as chief of police until they tried to attack this ticket by means of the Election Board, which a judge of this court has held to be an illegal board: an order of court record. That matter was properly before Judge Fisher. He was not trying it upon any other branch—he was merely interpreting the law as it was on the books. And then despite the order of the Circuit Court of this County, and, before Judge Jarecki—they take it upon themselves, in spite of the order of the Court, to constitute themselves a board.

Come in Tuesday morning, I want proof made, as near as it can be made, as to who was the clerk at the time that these petitions were filed. When that is made. I will enter an order here, commensurate with what I think is natural to be done to the people of the community—

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Mr. Lavery: We appreciate that. We may find we have an omelette, we cannot tell who was—

The Court: If you bring in the records down here—

Mr. Bulger: May I have a few words: First of all I want to except to your Honor's remarks; and secondly I want to call your Honor's attention to the fact that there are some motions pending with reference to the striking of the affidavit that were filed—

454 The Court: We will dispose of all these things on Tuesday.

Mr. Bulger: I want to call your Honor's attention to this fact,—and I do so in my brief, but I want to call your Honor's attention again to the bond form which was presented.

The Court: Don't waste my time at all on that. That was the most outrageous thing that has come to the attention of this Court. When a bond is fixed, you mail a form of bond, no sureties, in a situation where an entire community is being deprived of their rights, of at least their intentions as to whom they might wish to have to represent them out there in two particular offices.

Mr. Bulger: Your Honor, may I—

The Court: (Continuing) A ten-year-old boy sitting up here could see the purpose of that. It was merely to delay, until such time as this election was over.

Mr. Bulger: Your Honor—

The Court: Tuesday morning at ten o'clock. I will hear you on all motions. I want some proof made so the Court can try and determine who should go to jail.

The Clerk: Tuesday morning, May 29th.

(Continued to Tuesday, May 29, 1945.)

Proceedings of May 29, 1945.

Present: Frank J. Lexa for Petitioners.

Joseph I. Bulger for Respondents.

Mr. Bulger: Our report of proceedings is due June 2. This is a motion to certify and approve the report of

455 proceedings or allow an extension of time.

The Court: Have you the appeal bond?

Mr. Bulger: Not yet, your Honor. The amount of the bond is one that your Honor will have to fix.

Mr. Lexa: It has been fixed.

The Court: Why not bring your bond in?

Mr. Bulger: Unless your Honor tells me what the amount is—

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The Court: What amount did I tell you before?
Mr. Lexa: $25,000.
Mr. Bulger: That is too high.
The Court: What do you mean, too high?
Mr. Bulger: $500 or $1,000 or $2,000 I will be glad to get bond.
The Court: Make it $5,000.
Mr. Bulger: That is still too high. We cannot make that kind of a bond.
The Court: Why not? You can do a lot of things out there. You ought to be able to get a bond.
Mr. Bulger: If you make it $2,000, we will be able to get a surety on this bond.
Mr. Lexa: $5,000 is too small.
Mr. Bulger: The amount—it is not a question of damages but a question of cost. They are not entitled to any damages, regardless—
The Court: If they perfect the appeal on the mandamus that stops all proceedings. I will give you until tomorrow morning. Fix it in the sum of $2500.
Mr. Bulger: Thank you, your Honor.
456 The Court: Draw an order to that effect. Bring in your record.
Mr. Lexa: What about the contempt?
The Court: That will stop everything. If your mandamus is not sustained then that ends that. If it is sustained then somebody is going to jail.
Mr. Lexa: There is law that holds the other way.
The Court: Put it over until tomorrow morning. And bring your bond in tomorrow morning.
Mr. Bulger: Thank you.
(Recessed to 10:30 o'clock of the same day, Tuesday, May 29, 1945.)
Proceedings of May 29, 1945.
Present: Mr. Urban A. Lavery, Mr. Frank J. Lexa, Mr. Joseph I. Bulger.
The Court: In this matter I wish to have the record in the original mandamus certified. They wish to file a bond. And It seems to me that if they do that, any further proceedings until that particular phase of the case is decided, the mandamus, is no good; any other order following is not any good.
The Court: And check into the proposition whether or not if they perfect an appeal in the original mandamus

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action whether that won't stop any proceedings; if there is anything I might do that is dependent upon the action of the Appellate Court.

Mr. Lavery: I want to say this, if that should be done I think there is a grave chance of a miscarriage of justice in this matter, because this Court will not be hearing
457 these contempt proceedings; he will be in some other division.

The Court: I will give you this assurance: if that is done I will hear it, because I will be transferred for that purpose no matter what division I am in. I will give you that assurance right now.

Mr. Lavery: Thank you. Thursday morning.

Mr. Bulger: I have an order here. I gave it to the clerk.

The Court: Has he signed it?

Mr. Bulger: Yes.

Mr. Lexa: This order will not be entered until Thursday.

(Adjourned to Thursday, May 31, 1945.)

Proceedings of May 31, 1945.

Present: Mr. Urban A. Lavery, Mr. Frank J. Lexa, Mr. Joseph I. Bulger.

(Discussion between Court and Counsel.)

Mr. Lavery: If the Court please, we served a subpoena on Janda as the purported clerk of the Village to produce certain records under a *subpoena duces tecum.*

The Court: Have them here at 2:00 o'clock.

Mr. Bulger: I will try to have them here at 2:00 o'clock, whether I can have all the records here I don't know. They served us with two subpoenaes, which call for voluminous records. We had them all here Tuesday.

The Court: Can't you stipulate who the clerk was? Is there any dispute there was a clerk? Let us find out
458 on that proposition. There must be a clerk here somewhere.

(Recess until 2:00 o'clock.)

Proceedings at 2:00 o'clock May 31, 1945.

Present: Mr. Lavery, Mr. Lexa, Mr. Bulger.

The Court: Have you any motions?

Mr. Bulger: Yes, to strike from the files four affidavits filed on April 16th. The affidavits were filed. I was not present in court. I was not served with any copy of the affidavits; and second, to set aside the order denying the bond; and the third motion, some exhibits were introduced—

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I have no copies of the exhibits. I don't know what they are. Those are the three motions. I filed notice and I filed affidavit, in support of those motions.

The Court: Motions to strike affidavits denied. So that ends that.

Now what is your next motion?

Mr. Bulger: The same with reference to the exhibits.

Mr. Lexa: They did not get into evidence. They did not have the clerk's name.

The Court: All right, your motion is denied.

Mr. Bulger: Now I have this motion to dismiss the rule to show cause.

The Court: I am overruling the motion to dismiss.

Mr. Bulger: I ask leave now to file the answer of these defendants instanter.

The Court: They may be filed.

(Answer filed.)

459 Mr. Bulger: I am filing a separate answer for Mr. White and a separate answer for Mr. Janda.

The Court: According to your answer, White was the City Clerk at all times.

Mr. Bulger: At all times. We said so in our answer to the original petition.

The Court: Was he not Chief of Police at one time?

Mr. Bulger: Yes.

The Court: Janda had no office as Village Clerk.

Mr. Bulger: No, sir.

The Court: At no time?

Mr. Bulger: At no time:

Mr. Lavery: Mr. Bulger ought to be very careful. I think there are checks signed.

Mr. Bulger: We have all the records here, Mr. Lavery.

The Court: This practically sets up everything that you raise.

Mr. Bulger: Practically, yes, except—your Honor will notice on page 3, your Honor, Point 3 (indicating).

The Court: Nobody seems to know who was the clerk. Representation was made White was the clerk. He resigned—Janda was put in as clerk in White's place, and he became Chief of Police. Then they made another switch—

Mr. Bulger: That is the impression, your Honor, but those are not the facts.

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The Court: I don't know what the facts are, but that is what has been stated to us.

460 Mr. Bulger: That is the impression that everybody has so far.

The Court: All right. White was the city clerk. If that is the fact then you don't have to worry about anything else, as far as I am concerned.

Mr. Lavery: I want your Honor to get the full force and effect of Mr. Bulger's admission in the record, the statement, in the earlier part of this matter, "That we admit that White was the Clerk." Your Honor said, "All the time?" and he said, "Yes, all the time." I want that to be very definite in the record.

Mr. Bulger: Yes, we say now in answer to that petition, Mr. Lavery.

The Court: Janda's answer says that at no time prior to April 17th was he the duly elected and qualified village clerk.

Mr. Lavery: "Duly elected and qualified."

The Court: Didn't he act as clerk there?

Mr. Bulger: No.

Mr. Lavery: He does not deny that he did not.

The Court: Is he here? He better get here.

Mr. Bulger: I have people out looking for him.

The Court: He better get here.

Mr. Lavery: That is duplicity.

The Court: I will find out whether he is or not. He will tell me under oath.

Mr. Bulger: We have it under oath right there (indicating). We have it under oath in the answer filed to the original petition. We have it under oath in two places. We have it under oath in the answer to the petition for rule to show cause.

461 The Court: That he was ever a clerk?

Mr. Lavery: We never said he was the elected clerk, he was put in there.

The Court: He also said he never was prior to that time, April 17, 1945, appointed, or acting pro tempore in the place of White.

Mr. Lavery: It cannot be in place of White. There may have been an interval there.

The Court: It might have been. That is the only issue, either he was the clerk according to what you say,—he was

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the clerk at one, time, White was, and then—

Mr. Lavery: Janda.

The Court: Janda was.

Mr. Lavery. Your Honor miscomprehends my point.

The Court: He was clerk and then resigned and Janda was made clerk, and Janda acted as clerk up to the time they filed this petition. At that time he made another switch.

Mr. Lavery: I want to put myself right with your Honor just now. I want to call your attention to the fact that—

The Court: Are you prepared to show me who is the malefactor in this case?

Mr. Lavery: Yes, I am. Just a moment.

The Court: Let us get to that proposition.

Mr. Lavery: The malefactor, it is admitted,—the malefactor is the person who as clerk refused to comply with your Honor's judgment, and that is White.

462 The Court: All right. Then, what we are getting at —they say that White was the clerk. You say White was the clerk? If White was the clerk, then what are we dickering about.

Mr. Lavery: We are in this situation, there has been an effort to confuse the orders here, so if your Honor had named White as clerk, they would be in a situation where they could attempt to show that Janda was the clerk. And if your Honor had named—

The Court: That is the reason I want White here.

Mr. Bulger: White is here.

Mr. Lavery: White is here.

The Court: Bring him up here and have him sworn. Swear this man.

(Witness sworn.)

The Court: Now, he is going to testify. I advise you to answer.

Mr. Bulger: He can answer all the questions that your Honor wants to ask him.

Mr. Lavery: For the record, he is being called as the Court's witness. This is a contempt proceeding. I understand this is a contempt proceeding and the Court is the interested party.

The Court: Certainly I am interested.

RALPH E. WHITE, one of the respondents called as a witness testifies as follows:

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*Examination by the Court.*

My name is Ralph E. White. Residence is Lyons, Illinois, where I have lived for twelve years.

463 On April 15, and prior thereto and up to April 18, I was the duly elected, qualified and acting Village Clerk. I was elected in 1941, and acted continuously from 1941 up to the date of this election, and was Village Clerk at all times during that period. I am the particular person who received the nominating certificate for the Regular People's Party. I certified or sent that nominating petition with the various affidavits of candidates or nominees named in that petition to the election board consisting of Judge Jarecki, one Louis Hoffman and myself. I knew at all times that those petitions were on file, and knew that they had been received and I made due record of it and I then certified them to that purported election board.

I knew that Judge Fisher of the Circuit Court had declared that that election board was illegally constituted, and directed it to be dissolved. In spite of that we went ahead on advice of counsel and on advise of counsel disregarded Judge Fisher's order.

I was served with summons as one of the defendants in this mandamus proceeding.

I knew we were before this Court, and I was represented by Mr. Bulger. I had never seen a mandamus order entered by this Court. I did not know that the Court had issued one. I may have signed a bond for Mr. Bulger with reference to this mandamus proceeding. I would not know for sure.

I am the City Clerk, over 21 years of age, and can read and write the English language. I signed on advice of my counsel. I do not recall if he told me what it was. I would not sign a death warrant for myself on the advice of my counsel.

464 The Court: You may draw an order. This man goes to jail for six months, the County jail. This is a first class joke.

Mr. Bulger: May I ask your Honor for a ten day stay.

The Court: I will give you one day.

Mr. Bulger: Tomorrow is Saturday.

The Court: Unless you have a bond here in the sum of $5,000 with competent sureties, he goes to jail tomorrow.

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Mr. Bulger: We have already a two thousand dollar bond.

The Court: I do not care if you have a $50,000 bond. This is a different proposition. If you argue with me any longer, I will double that. You present a bond here tomorrow morning for $5,000. If it is not presented, he goes to jail.

Mr. Lavery: Is he to be at large in the meantime.

The Court: Yes. If he runs over to Germany, it is alright with me. We will be well rid of him.

Mr. Lexa: We will bring in the order tomorrow morning. What disposition does your Honor make with reference to Janda?

The Court: Rule to show cause discharged as to Janda.

(Adjournment to Friday, June 1, 1945.)

Proceedings of June 1, 1945.

Present:

Mr. Lavery, Mr. Lexa, Mr. Bulger.

The Court: I think the bond is O. K. I will sign the bond.

465 Mr. Bulger: I want to make a statement for the record, that there was no evidence adduced here that Mr. White absconded or stayed or remained away.

The Court: The affidavits are on file and are a part of the record. Let us see the order. I will sign the order.

Certificate of Joseph A. Graber dated June 28, 1945, to report of proceedings.

Certificate of official shorthand reporter to transcript of proceedings.

Stipulation between counsel that the original report of proceedings be used on appeal in lieu of copy.

Order entered June 28, 1945, showing report of proceedings presented, approved and certified.

Order entered May 31, 1945: Rule to show cause as to Janda is discharged.

Order entered June 6, 1945, on motion of respondent the attachment bond heretofore posted by respondent is released.

Order entered May 29, 1945: Ordered that defendants post $2,500 appeal bond with sureties to be approved on May 31, 1945. That such bond stay all contempt proceedings, and rule to show cause is continued generally until appeal from mandamus order entered April 13, 1945, is decided in the Appellate Court; that such $2,500 appeal

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bond is made a supersedeas to which order petitioners object and except.

Order entered May 31, 1945, denies defendants motion to strike the affidavits filed on April 16, 1945, and to
466 strike certain exhibits filed on April 16, 1945, and to set aside and vacate the Court's order of April 16, 1945, denying appeal bond.

Further ordered that portions of the order entered on May 29, 1945, are erroneous, and should be vacated and that the order entered on May, 29, 1945, excepting only that portion fixing the appeal bond in the sum of $2,500 be and the same is hereby vacated and set aside.

Certificate of the Clerk of the Superior Court dated July 2, 1945, that the transcript of record is true and correct as *per praecipe* except the original report of proceedings is included by stipulation.

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JOSEPH I. BULGER,
*Attorney for Defendants.*

467 **ABSTRACT OF APPELLATE COURT RECORD.**

Placita.

Convening of the Appellate Court of Illinois, First District, June Term A. D. 1945.

Motion supported by suggestions and affidavit of appellants to consolidate cause General Number 43493 for hearing with cause General Number 43515 in this Court on one set of abstracts and briefs to be filed; motion allowed.

Motion and affidavit of appellants to extend the time for filing abstracts and briefs; motion allowed.

Order assigning cause to the Second Division of the Appellate Court for hearing and determination.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Order that cause be taken under advisement on abstracts filed and on briefs of appellants to be filed and briefs of appellees to be filed and consolidated with cause General Number 43493.

Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

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Motion and affidavit of appellants to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellees to extend the time for filing briefs; motion allowed.

Motion and affidavit of appellants to extend the time for filing reply briefs; motion allowed.

Motion of appellants to extend the time for filing reply briefs; motion allowed.

468 May 29, A. D, 1946. Opinion of the Appellate Court that neither in the record and proceedings nor in the rendition of the contempt order of June 1st A. D. 1945 is there anything erroneous, vicious or defective; and that in the record there is no error: Therefore, it is considered by the Court that the contempt order of June 1st A. D. 1945 entered by the Superior Court of Cook County be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said Lyman F. Martin, et al., recover of and from the said appellant, their costs, etc.

June 12, A. D. 1946. Order denying appellants' petition for rehearing.

June 18, A. D. 1946. Motion of Ralph E. White and Joseph F. Janda, appellants in cause General Number 43493 and Ralph E. White, Appellant in cause General Number 43515 that the issuance of the mandate in these causes be stayed pending the disposition of a petition for leave to appeal in the Supreme Court of Illinois to review the judgments of this Court; motion allowed, mandates stayed.

June 20, A. D. 1946. Certificate of the Clerk of the Appellate Court of Illinois, First District, to a true copy of the final order and judgment and all other proceedings of this Court in this cause.

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JOSEPH I. BULGER,
*Attorney for Petitioners.*

ODE L. RANKIN,
JOSEPH I. BULGER,
*Of Counsel.*

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469 [fol. 228] RECORD FROM APPELLATE COURT, FIRST DISTRICT, TO SUPREME COURT

Nisi Prius Gen. No. 45 S 6174
Appellate Gen. No. 43493
Supreme Court Gen. No.——

THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Appellants

[fol. 229] At a term of the Appellate Court, Begun and held at Chicago, on Tuesday, the Second day of April, in the year of our Lord One Thousand Nine Hundred and Forty-Six within and for the First District of the State of Illinois.

Present Hon. Hugo M. Friend, Presiding Justice; Kickham Scanlan, Justice; Hon. John J. Sullivan, Justice; Sheldon W. Govier, Clerk; Michael F. Mulcahy, Sheriff.

Court met pursuant to law.

Court opened by proclamation.

No. 43493

THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Appellants
Appeal from Cook Superior

Be it remembered, that heretofore on the Fifth day of June A. D. 1945, it being one of the days of said June
470 Term, A. D. 1945, certain proceedings were had in said Court and entered of record in words and figures following, to-wit:

[fol. 230] At a Term of the Appellate Court, Begun and held at Chicago, on Tuesday, the Fifth day of June in the year of our Lord One Thousand Nine Hundred and Forty-Five within and for the First District of the State of Illinois.

POOR COPY

Present Hon. Grover C. Niemeyer, Presiding Justice; David F. Matchett, Justice; John M. O'Connor, Justice; Sheldon W. Govier, Clerk; Michael F. Mulcahy, Sheriff.

Court met pursuant to law.

Court opened by proclamation.

And afterwards, on the 30th day of July, A. D. 1945, it being one of the days in vacation during the June Term A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 231] 43493

PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, et al., Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, *etc.*, Appellants
Appeal from Cook Superior

43515

PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., *Defendants* below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

On this day in vacation during the June Term A. D. 1945, the Honorable David F. Matchett and John M. O'Connor, Justices of said Court having considered the motion 471 of Appellants to consolidate cause General Number 43493 for hearing with cause General Number 43515 in this Court on one set of abstracts and briefs to be filed as per suggestions and affidavit filed herein, and the undersigned being fully advised in the premises doth order that said motion be and the same is hereby allowed.

David F. Matchett, Presiding Justice; John M. O'Connor, Justice, First Division, Appellate Court, First District, Illinois.

And afterwards, on the 10th day of September A. D. 1945, it being one of the days of the June Term A. D. 1945,

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the following proceedings were had and entered of record in said cause, to-wit:

[fol. 232] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE, et al., Defendants Below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, et al., Appellants
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including October 12th A. D. 1945, in which to file their abstracts in said cause and to extend the time to and including November 1st
472 A. D. 1945, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby extended thirty days from September 12th A. D. 1945 in which to file their abstracts and briefs in said cause.

And afterwards, on the 13th day of September A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 233] IN THE MATTER OF THE ASSIGNMENT OF CASES TO THE SECOND DIVISION, APPELLATE COURT, FIRST DISTRICT, ILLINOIS, OCTOBER TERM, A. D. 1945 CALENDAR

On the Court's own motion it is ordered that the following numbered cases on the October Term Calendar, A. D. 1945 of said Court be and the same are hereby assigned to

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the Second Division Appellate Court for hearing and determination, to-wit: 43493, People of the State of Illinois, ex rel., Lyman F. Martin, et al., vs. Ralph E. White, et al.

And afterwards, on the 16th day of October, A. D. 1945, it being one of the days of the October Term, A. D. 1945 of said Court, the following proceedings were had and entered of record in said cause, to-wit:

473 [fol. 234] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et. al., Plaintiffs Below,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including October 27th A. D. 1945, in which to file their briefs in said cause, as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 23rd day of October A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

474 [fol. 234a] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN et al., Appellees,

vs.

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RALPH E. WHITE, et al., Appellants
Appeal from Cook Superior

43515

PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE, et al., Defendants below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including November 27th A. D. 1945, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises, doth order that said time be and the same is hereby so extended.

And afterwards, on the 30 day of October A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 235] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Appellees,

vs.

RALPH E. WHITE, et al., Appellants
Appeal from Cook Superior

This cause having this day been reached in the call of the docket, and counsel desiring to argue the same, and the Court, not being fully advised in the premises, doth
475 order that said cause be taken under advisement on abstracts filed and on briefs of Appellants to be filed by November 27, 1945, and briefs of Appellees due 30 days thereafter and consolidated with cause General Number 43515.

And afterwards, on the 27th day of November A. D. 1945, it being one of the days of the October Term A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

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[fol. 236] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants

43515

Appeal from Cook Superior

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RAIPH E. WHITE and JOSEPH F. JANDA, Defendants below

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant

Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including December 27th, A. D. 1945, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 26th day of December, A. D. 1945, it being one of the days of the December Term, 476 A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 237] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Appellants

Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

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RALPH E. WHITE and JOSEPH F. JANDA, Defendants below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including January 7th, A. D. 1946, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises, doth order that said time be and the same is hereby so extended.

And afterwards, on the 29th day of January, A. D. 1946, it being one of the days of the December Term, A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

477 [fol. 238] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE, et al., Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellees by their counsel and moved the Court to extend the time to and including March 8th, A. D. 1946, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises, doth order that said time be and the same is hereby so extended.

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And afterwards, on the 19th day of March, A. D. 1946, it being one of the days of the February Term, A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

478 [fol. 239] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including April 8th, A. D. 1946, in which to file their reply briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises, doth order that said time be and the same is hereby so extended.

And afterwards, on the 10th day of April, A. D. 1946, it being one of the days of the April Term, A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

479 [fol. 240] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

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RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including April 22nd, A. D. 1946, in which to file their reply briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises, doth order that said time be and the same is hereby so extended.

And afterwards, on the 29th day of May, A. D. 1946, it being one of the days of the April Term, A. D. 1946, there was filed in the office of the Clerk of said Appellate Court the written opinion of this Court, which opinion is in the words and figures following, to-wit:

480 [fol. 240a] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Appellants
Appeal from Superior Court, Cook County

Mr. Presiding Justice FRIEND delivered the Opinion of the Court:

By an order here entered on July 30, 1945 this cause was consolidated with cause No. 43515, and the parties were allowed to file one set of abstracts and briefs. This is an appeal from a judgment in mandamus; cause No. 43515 is an appeal from a contempt proceeding based on the mandamus judgment. The appeal in the mandamus case is by both defendants from a judgment ordering them "and

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each of them (so far as either of them may act or purport to act as said Village Clerk)" to place the Regular People's Party ticket on the ballot for the village election in Lyons, Illinois, held on April 17, 1945. The appeal in the contempt case is by Ralph E. White from an order adjudicating him as Village Clerk to be in contempt of court for failing to obey the order to place the designated ticket on the ballot for said election. Because the ticket was not placed on the ballot by either defendant, a rule to show cause was entered on both of them. Each separately moved to discharge the rule, and their motions being denied, they separately answered the rule. The court, pursuant to a hearing on the rule to show cause, discharged the rule as to Joseph F. Janda and adjudicated the defendant Ralph E. White to be in contempt of court for failure, as Village Clerk, to comply with the mandamus judgment, and fixed his punishment at six months' imprisonment in the County Jail of Cook County.

The facts, so far as they are essential to a consideration of the issues involved, disclosed that the Regular People's [fol. 241] Political Party and the Progressive Citizens Ticket Political Party in the Village of Lyons, Illinois, by caucus, nominated separate candidates for certain village offices to be filled at an election scheduled for April 17, 1945. Certificates of nominations of the candidates on 481 both tickets were duly filed in the office of the Village Clerk. The relators herein were the candidates on the Regular People's Party ticket. Among the candidates on the opposing ticket were Theofil T. Bulat, who was running for reelection to the office of Village President, and Joseph F. Janda, one of the respondents, who was a candidate for the office of Village Clerk.

Objections were filed to the candidates on the Regular People's Party ticket on the sole ground that the population of the Village of Lyons exceeded 5,000, and that therefore under the controlling statute the Regular People's Party, which was an established political party, could not nominate by caucus. Section 10-1 of the Illinois Election Code (Ill. Rev. Stat. 1945, ch. 46) provides that an established political party may nominate candidates for village offices by caucus where the population is less than 5,000. Section 1-9 of the Cities and Villages Act (Ill. Rev. Stat. 1945, ch. 24) contains the following provisions: "When-

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ever in this Act any provision thereof is based upon the number of inhabitants, the number of inhabitants of the municipality shall be determined by reference to the latest census taken by authority of the United States or this State, or of that municipality. It is the duty of the secretary of state, upon the publication of any State or United States census, to certify to each municipality the number of inhabitants, as shown by that census. And the several courts in this state shall take judicial notice of the population of any municipality, as the population appears from the latest Federal, State, or municipal census so taken." No state or municipal census of the Village of Lyons has [fol. 242] been taken since the Federal census of 1940, which shows the population of the village to be 4,960. That is the only evidence of any official census in the record.

On March 23, 1945 the objections to the Regular People's Party candidates were presented to what purported to be a Municipal Officers Electoral Board, convened pursuant to the provisions of section 10-9 of the Election Code and consisting of Edmund K. Jarecki, County Judge, Chairman, in lieu of the President of the Village, who was a candidate for reelection and thereby disqualified to serve on the board, the respondent Ralph E. White, who represented himself to be the Village Clerk and was also acting Chief of Police of the village, and Louis Hoffman, a member of the Board of Trustees of the Village of Lyons.

482 John Daly, assistant attorney for the Election Commissioners, informed the board that the last Federal census showed the population of the Village of Lyons to be 4,960, and expressed the opinion that the last Federal census figure governed the action of the board. At that proceeding the only other reference to a population census figure was made by respondent White, who, without any evidentiary support, casually remarked that "according to the OPA statistics there is approximately 6,200, I believe."

Judge Jarecki, the Statutory Chairman of the board, thereupon voted to place the Regular People's Party candidates on the ballot, while White and Hoffman voted to keep them off. Before the board had announced its decision, the Chairman at the request of counsel for the relators, agreed to suspend issuing any order until March 27, 1945 so as to give relators an opportunity to have decided in a mandamus proceeding then pending before the Circuit

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court of Cook County the question whether Ralph E. White was the Village Clerk, since this would determine his right to act as a member of the board.

[fol. 243] The relators in this proceeding were the plaintiffs in the Circuit court mandamus case and Judge Edmund K. Jarecki was the defendant in that proceeding, which came on for hearing on March 26, 1945. The Circuit court there found that Ralph E. White was not the Clerk of the Village of Lyons and therefore had no authority to act as a member of the board, and entered its judgment as follows: "Wherefore, the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons, is hereby directed and ordered to enter a finding in the proceedings of the said Board, to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law, and that the said Electoral Board, therefore, should be dissolved; and the said defendant is further ordered and directed, forthwith, to return all certificates of nomination, or nomination papers and other documents now in his possession as such purported Chairman of said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve the said purported Electoral Board."

483 On March 26, 1945, being the same day on which the foregoing judgment in mandamus was entered in the Circuit court, and in compliance therewith, Judge Jarecki returned the nomination papers in his possession to the Village Clerk, and advised him that "the mandamus action automatically ends the action of the Electoral Board."

The following day White and Hoffman, accompanied by Joseph F. Bulger, attorney for the Village of Lyons, called upon Judge Jarecki, who advised them that the board was [fol. 244] dissolved; that there was no board in existence; and that no further action was to be taken by it. Following this conference, White and Hoffman, accompanied by Mr. Bulger, without notice to the relators of their place of meeting, immediately proceeded to room 233 in the County Building, and held what purported to be a meeting of the

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Municipal Officers Electoral Board. They decided that the vote taken at the meeting on March 23, 1945, of what purported to be the Municipal Officers Electoral Board, was legal and binding, and authorized Ralph E. White to enter such findings upon the records of the board and transmit the decision to candidates of the Regular People's Party, the Village Clerk and the objectors to the certificates of nomination. That meeting of March 27 was held in disregard of the Circuit court order of March 26, 1945, and Judge Jarecki's direction that what purported to be an electoral board be dissolved; it was held without the presence of Judge Jarecki and without notice to the relators; and evidence introduced at the hearing before Judge Jarecki on March 23, 1945, showing the population of the Village of Lyons according to the last census taken was completely ignored.

On March 28, 1945, White returned the certificate of nomination of the Regular People's Political Party to that party with the rulings adopted by him and Hoffman on March 27, 1945, in room 233, County Building, in the absence of Judge Jarecki, and at the same time White transmitted the same ruling to all candidates on the Regular People's Party ticket.

On April 3, 1945, the Regular People's Party candidates made a demand in writing on both respondents White and Janda that relators' names be placed on the ballot, and when White and Janda persisted in their refusal to comply with that request, relators filed the instant mandamus proceeding in the Superior court on April 5, 1945. After 484 the cause came on for hearing on April 12, 1945, before Judge [fol. 245] Joseph Graber, he entered an order the following day *nunc pro tunc* as of April 12, 1945, directing White and Janda and each of them (so far as either of them may act or purport to act as Village Clerk) to print the names of the Regular People's Party's candidates on the ballots to be used in the April 17 election and to destroy any ballots already printed. On April 13, 1945, the respondents filed their formal notice of appeal from the judgment order of mandamus and served notice on counsel for relators of a motion for April 16, 1945, to fix the amount and conditions of the appeal bond.

It appears that on April 13, 1945, relators made repeated attempts to serve on respondents the writ of mandamus

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issued by the Superior court. They found that White had not been in his place of employment that entire day, nor did he appear at the office of the Village Clerk or at the Police Department. No one responded to repeated knockings at the door of White's home that afternoon and evening, and one of White's neighbors informed persons who attempted to serve the writ that he had gone away on a three-day vacation. With respect to Janda, no one answered the door of his residence on the afternoon of April 13, but on the evening of that day his niece, who was a person over 21 years of age and a member of his household, came to the door and told the persons attempting to serve the writ that Janda had gone somewhere, that she did not know where nor did she know when he would return. Later that evening another attempt was made to serve the writ, and his niece, although she looked through the glass door, would not open it or admit the persons attempting to serve the writ. Still later, at 11:00 o'clock in the evening, in response to a third visit, his niece said that Janda had not returned and that she did not know when he would be back. When an attempt was then made to serve the writ by leaving a copy with her, she refused to open the door and ordered the person attempting [fol. 246] to serve the writ to leave the premises. The following morning, April 14, the writ was served on Janda by leaving a copy of it with his niece.

As a result of the foregoing circumstances the names of the Regular People's Party's candidates did not appear on the ballot for the election, and the only names that appeared on that ballot were those of the candidates of the Progressive Citizens' ticket.

485 Since the election has taken place the mandamus case is moot except for the question whether the court had jurisdiction, the determination of that issue being essential for the disposition of the contempt proceeding. The principal ground urged for reversal is that the Municipal Officers Electoral Board is given exclusive and final jurisdiction to decide whether a ticket shall go on the ballot; that where the board has acted, neither the Circuit nor the Superior court has jurisdiction to order a Village Clerk to disregard its action; and that to do so is to invade the executive department of the government, in violation of Article III of the Constitution, which forbids one department from assuming the powers of another. Since neither of

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these appeals was prosecuted to the Supreme court, which has exclusive jurisdiction to determine constitutional questions, we are called upon to determine only whether the judgment of the Superior court in the mandamus suit was void for all purposes, thus make it impossible to predicate contempt proceedings on a refusal to obey the mandamus judgment.

Respondents contend that courts have no jurisdiction to review the judgment of an electoral board, and in support of that contention they rely upon *People ex rel. Murray* v. *Rose,* 211 Ill. 249, *People ex rel. McKinlay* v. *Rose,* 211 Ill. 252, *People ex rel. Williams* v. *Rose,* 211 Ill. 259, and *People ex rel. Perry* v. *Koerner,* 365 Ill. 521, purporting to construe [fol. 247] the provisions of sections 10-9 and 10-10 of the Election Code. The pertinent part of section 10-10 contains the following provision: "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nomination papers on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final." The decisions upon which respondents rely can be readily distinguished under the facts in this proceeding. Since no decision on the objections in the instant case was made by a validly constituted electoral board, 486 relators had the right to have their names placed upon the ballot to be furnished the voters, and this was a right that the Superior court, under the holding in *People ex rel. Powell* v. *Hartley,* 170 Ill. 370, had jurisdiction to enforce by mandamus. In that case the Supreme Court, holding that the issuance of a writ of mandamus was proper to compel a county clerk to place upon the ballot the names of nominees entitled to be on it, made the following pertinent observation: "To hold otherwise would place it within the power of the officials charged with the duty of printing the ballots, to disfranchise, for all prac-

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tical purposes, a great number—perhaps a majority—of the legal voters in their counties." With the exception of *People ex rel. McKinlay* v. *Rose*, none of the cases cited by respondents is applicable to the jurisdictional question here [fol. 248] presented. In *Murray* v. *Rose* and *Williams* v. *Rose* decisions on objections to nominees had been made by validly constituted electoral boards, and in *Perry* v. *Koerner* where a State Primary Certifying Board, consisting of the Governor, Secretary of State and State Auditor, had already certified Perry's name for the ballot and the other candidate subsequently filed a petition for mandamus ordering the county clerks to omit his opponent's name from the ballot, the writ was denied because the petition failed to make parties defendant the members of said board and the party whose name it sought to have omitted from the ballot. In *McKinlay* v. *Rose* objections to certificates of nomination were presented to the county judges of the two counties comprising a senatorial district, who were unable to agree on the disposition of the objections, and one of the candidates applied to the Supreme court for a writ of mandamus directing the Secretary of State to take steps to place his name on the ballot. The petition was denied only because it failed to allege that the parties who called the convention which nominated the relator had authority to call it, but the opinion impliedly recognizes the proposition that where a board authorized to pass on objections, failed to arrive at a valid decision, the courts may determine the rights of candidates to have their names on the ballots and to enforce those rights by writ of mandamus.

With respect to the provisions of the statute hereinbefore quoted, it will be observed that the electoral board is vested with the power and duty to decide whether or not the certificate of nomination and nomination papers on file are valid or whether the objections thereto should be
487 sustained, and although it provides that the decision of a majority of the electoral board shall be final, it must have been the intention of the legislature to provide that it "shall be final" only when it has been arrived at by a legally constituted board, [fol. 249] in a legal manner, pursuant to competent evidence, without the abuse of discretion, not arbitrarily or fraudulently. If the statute were to be construed otherwise, the final decision of the elec-

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toral board, even though fraudulent, arbitrarily arrived at or based upon a clear abuse of discretion and without any evidence to support its decision, would vest those members of the board who happened to have control of the political machinery, with power to disfranchise candidates of an opposing party who might conceivably be the choice of a majority of the electorate and thus perpetuate the members of the controlling political power in office. This presents a challenge to justice. Our democratic institutions are based on free elections, and our laws and traditions recognize the rights of persons who are qualified and who comply with statutory provisions to present themselves for public office. It certainly could not have been the intention of the legislature to defeat these inviolate rights by vesting the electoral board with a final decision where it clearly appears that its ruling is arbitrary or predicated upon an abuse of power or even fraudulent.

In the case at bar the mandamus judgment in the Circuit court specifically found that White was not the Village Clerk, thereby disqualifying him from membership on the electoral board, and consequently that the board was not legally constituted to pass on the objections to relators' nomination papers. However, assuming that the decision had been made by a legally constituted board, we are still of the opinion that the Superior court had jurisdiction to review by mandamus the action of a board which was so clearly an abuse of power and so arbitrary as to amount to fraud. The sole objection to the nomination of the relators was that the population of the Village of Lyons exceeded 6,000 and therefore they could not be nominated by the caucus of an established political party in the village. [fol. 250] There was no evidence to support this finding. The only evidence adduced before the board was that the Federal census showed the population of the village to be 4,960, and in the absence of any countervailing proof that a state or municipal census taken since 1940 disclosed the population to be in excess of 5,000, the electoral board
488 was bound by that evidence and had no alternative except to allow the nomination papers of the relators to be filed. The right of courts to review by mandamus the acts of public officers where they have acted arbitrarily or in abuse of discretion is well settled by numerous decisions in this state holding that if a discretionary power is exer-

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cised with manifest injustice, the courts are not precluded from commanding its due exercise, and as stated in *Dental Examiners* v. *The People*, 123 Ill. 227, "they will interfere, where it is clearly shown, that the discretion is abused. Such abuse of discretion will be controlled by *mandamus*." Because of the striking similarity between the motives of the dental examiners in that case and the apparent motives of two of the members of the electoral board, White and Hoffman, the following comments of the Supreme court are in point: "If these averments are true, the members of the State board are abusing their discretion and making an unjust use of it. They have a right to decide whether the college, at which an applicant for license has graduated, is reputable or not. But they must decide that question upon just and fair principles. * * * If four of the five members, which compose the board, are instructors in a particular college, and if they are making use of their power under the State law to build up their own institution and crush out its rival, they are acting from motives of self-interest and not in the interests of the public. It can not be tolerated that licenses should be withheld for any such unworthy reasons." The reasoning of the court in that case is applicable to the facts of this [fol. 251] proceeding. We recently decided in two cases where State boards had refused examination admission to physicians who desired to practice medicine in the State of Illinois that if their ruling was arbitrary or an abuse of discretion, the court could control their action by mandamus, and the numerous cases cited and reviewed in those decisions amply support the conclusions there reached. *People ex rel. Schutz* v. *Thompson*, 325 Ill. App. 95; and *Schleifer* v. *Department of Registration and Education of Illinois*, 326 Ill. App. 259 (Abst.).

The plain facts of this case clearly indicate that instead of permitting the names of all candidates duly nominated to appear on the ballot so that the voters could decide who their village officers should be, the purported electoral board, which was held by the order of the Circuit court 489 and the Statutory Chairman of the board to be illegal, entered into an undertaking which was in the nature of a conspiracy to keep the Regular People's Political Party candidates off the ballot in order to insure the election of the candidates of the Progressive Political Party with

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which respondents were affiliated. This was nothing short of an infamous and disgraceful scheme to steal an election. Three able and experienced jurists, Judges Graber, Fisher and Jarecki, all of whom had occasion to inquire impartially into the facts, would not countenance the brazen scheme. We think it would be an extremely dangerous doctrine, indeed, to hold that in the light of the record presented, this illegal board could hold a rump session, and without any supporting reason, disqualify duly nominated candidates of the opposing party.

Arguments of respondents as to the uncertainty of the mandamus judgment are beside the point, because even if it were erroneous, that circumstance would not render it [fol. 252] void. Nor would the fact that the mandamus writ was not served on White, excuse him from obeying it under the circumstances of this case, because he had full knowledge of the entry of the judgment, having on the day following the entry of the mandamus judgment filed his formal notice of appeal and served notice on counsel for relators of a motion to fix the amount and conditions of the appeal bond.

We therefore hold that the Superior court had jurisdiction to review these proceedings by mandamus, and the judgment of that court in the mandamus proceeding is accordingly affirmed.

Judgment Affirmed.

Scanlan and Sullivan, JJ., concur.

[fol. 253] And afterwards, on the same day, to-wit: the 29th day of May, A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

490 [fol. 254] No. 43493

THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of Lyman F. Martin, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Appellants
Appeal from Cook Superior

On this day came again the said parties, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things

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therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment in the Mandamus proceedings aforesaid is there anything erroneous, vicious, or defective; and that in the record there is no error: Therefore, it is considered by the Court that the judgment in the Mandamus proceedings aforesaid, be Affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellants their costs, by them in this behalf expended, to be taxed, and that they have execution therefor.

And afterwards, on the 12th day of June, A. D. 1946, it being one of the days of the June Term, A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

491 [fol. 255] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE, et al., Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

The Court having considered the petition of Appellant praying for a rehearing in said causes, and being now fully advised in the premises, doth order that the prayer of said petition be and the same is hereby denied.

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And afterwards, on the 18th day of June, A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

492 [fol. 256] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

VS.

RALPH E. WHITE and JOSEPH F. JANDA, etc., Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

VS.

RALPH E. WHITE, et al., Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

VS.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

The Court having considered the motion of Ralph E. White and Joseph F. Janda, Appellants in cause General Number 43493, and Ralph E. White, Appellant in cause General Number 43515, that the issuance of the mandate herein be stayed until the time for the filing of a petition in the Supreme Court of Illinois for leave to appeal to review the judgments of this Court in said causes shall have expired, or if such petition shall have been filed within the proper time, then until said petition shall have been granted or refused; and the Court, being fully advised in the premises, doth grant said motion and doth order that the issuance of the mandates in said causes be and the same are hereby stayed accordingly.

And afterwards, on the 1st day of July, A. D. 1946, the following proceedings were had and entered of record in said causes, to-wit:

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493 [fol. 257] IN RE PUBLICATION OF WRITTEN DECISIONS OF THIS COURT

It is hereby ordered that the cases, the numbers and titles of which are given below, the written decisions of this Court filed the 29th day of May, A. D. 1946, shall be published in full in the Appellate Court Reports.

And the decisions so filed which are not designated below shall be published by including an adequate abstract of such written decisions.

43493. People, ex rel. Martin, et al. vs. White, et al.

And afterwards, on the 1st day of October, A. D. 1946, it being one of the days of the October Term, A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 258] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE, et al., Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

The Court having considered the motion of Appellants that the issuance of the mandate herein be stayed until the time for the filing of the petitions in the Supreme Court of the United States for a Writ of Certiorari to review
494 the judgments of this Court in said causes shall have expired without any such petitions having been filed, and if such petitions for said writs shall have been filed

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within the proper time, then until said writs of certiorari shall have been granted or refused, and the Court being fully advised in the premises, doth grant said motion and doth order that the issuance of the mandates in said causes be and they are hereby stayed accordingly.

And afterwards, on the 4th day of October, A. D. 1946, it being one of the days of the October Term, A. D. 1946, there was filed in the office of the Clerk of said Appellate Court, a certified copy of an order of the Supreme Court of Illinois, denying the petition for leave to appeal in said causes, which said order is in the words and figures following, to-wit:

[fol. 259] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss.:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September in the year of our Lord, one thousand nine hundred and forty-six, within and for the State of Illinois.

Present: Walter T. Gunn, Chief Justice; Justice Clyde E. Stone, Justice Loren E. Murphy, Justice William J. Fulton, Justice Francis S. Wilson, Justice June C. Smith, Justice Charles H. Thompson; George F. Barrett, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be It Remembered, that, to-wit: on the 11th day of September, 1946, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

495 No. 29770

RALPH E. WHITE and JOSEPH F. JANDA, Petitioners,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel., LYMAN F. MARTIN, et al., Respondents

Petition for Leave to Appeal from Appellate Court, First District (43493-45 S. 6174)

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being

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now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioners costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this 3rd day of October, 1946.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[Endorsed:] No. 43493. Supreme Court of Illinois vs. ——— ———. Denial Petition Leave to Appeal. Filed Appellate Court, Oct. 4, 1946. Sheldon W. Govier, Clerk.

[fol. 260] I, Sheldon W. Govier, Clerk of the Appellate Court, in and for the First District of the State of Illinois, and keeper of the records, files and seal thereof, do hereby certify that the foregoing pages 1 to 227 inclusive, are a true copy of the complete abstract of Record filed by the Appellants in the case of The People of the State of Illinois, ex rel., Lyman F. Martin, et al., Appellees, vs. Ralph E. White, et al., Appellants, in cause General Number 43493 and in the contempt proceedings entitled People of the State of Illinois, Appellee, vs. Ralph E. White,
496 Appellant, our General Number 43515 in said Appellate Court on October 13th, A. D. 1945.

I further certify that the foregoing pages 228 to 260 inclusive are a true, full and complete Transcript of the Record of proceedings of said Appellate Court in the case of The People of the State of Illinois, ex rel., Lyman F. Martin, et al., Appellees, vs. Ralph E. White, et al., Appellants, of record in my office in cause General Number 43493, and also of the opinion of said Appellate Court rendered herein and filed in said cause on the 29th day of May, A. D. 1946, and also a certified copy of the order of the Supreme Court of Illinois, denying Leave to Appeal in

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said cause which was filed in said Appellate Court on the 4th day of October, A. D. 1946, in said cause, as all of the same now appear on file in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 7th day of October in the year of our Lord one thousand nine hundred and forty-six.

Sheldon W. Govier, Clerk of the Appellate Court of the First District, Illinois. (Seal.)

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[fol. 261] RECORD FROM APPELLATE COURT, FIRST DISTRICT, TO SUPREME COURT

Nisi Prius Gen. No. 45 S 6174
Appellate Gen. No. 43515
Supreme Court Gen. No. ——

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE, et al., Defendants Below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant

[fol. 262] At a Term of the Appellate Court, begun and held at Chicago, on Tuesday, the Second day of April 497 in the year of our Lord one thousand nine hundred and forty-six, within and for the First District of the State of Illinois.

Present: Hon. Hugo M. Friend, Presiding Justice; Hon. Kickham Scanlan, Justice; John J. Sullivan, Justice; Sheldon W. Govier, Clerk; Michael F. Mulcahy, Sheriff.

Court met pursuant to law.

Court opened by proclamation.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE, et al., Defendants Below

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No. 43515

PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

Be it remembered, that heretofore on the Fifth day of June A. D. 1945, it being one of the days of said June Term, A. D. 1945, certain proceedings were had in said Court and entered of record in words and figures following, to-wit:

[fol. 263] At a Term of the Appellate Court, begun and held at Chicago, on Tuesday, the Fifth day of June in the year of our Lord one thousand nine hundred and forty-five within and for the First District of the State of Illinois.

Present Hon. Grover C. Niemeyer, Presiding Justice; Hon. David F. Matchett, Justice; Hon. John M. O'Connor, Justice; Sheldon W. Govier, Clerk; Michael F. Mulcahy, Sheriff.

Court met pursuant to law.

Court opened by proclamation.

And afterwards, on the 30th day of July, A. D. 1945 it being one of the days in vacation during the June Term A. D. 1945, the following proceedings were had and 498 entered of record in said cause, to-wit:

[fol. 264] 43493

PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., Appellants
Appeal from Cook Superior

43515

PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., Defendants below

BLEED THROUGH

PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

On this day in vacation during the June Term A. D. 1945, the Honorable David F. Matchett and John M. O'Connor, Justices of said Court having considered the motion of Appellants to consolidate cause General Number 43493 for hearing with cause General Number 43515 in this Court on one set of abstracts and briefs to be filed as per suggestions and affidavit filed herein, and the undersigned being fully advised in the premises doth order that said motion be and the same is hereby allowed.

David F. Matchett, Presiding Justice; John M. O'Connor, Justice, First Division, Appellate Court, First District, Illinois.

And afterwards, on the 10th day of September A. D. 1945, it being one of the days of the June Term A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 265] 43493

499 THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

vs.

RALPH E. WHITE, et al., Defendants Below
PEOPLE OF THE STATE OF ILLINOIS, Appellees,

vs.

RALPH E. WHITE, et al., Appellants
Appeal from Cook Superior

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This day came Appellants by their counsel and moved the Court to extend the time to and including October 12th A. D. 1945, in which to file their abstracts in said cause and to extend the time to and including November 1st A. D. 1945, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby extended thirty days from September 12th A. D. 1945 in which to file their abstracts and briefs in said cause.

And afterwards, on the 13th day of September A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 266] IN THE MATTER OF THE ASSIGNMENT OF CASES TO THE SECOND DIVISION, APPELLATE COURT, FIRST DISTRICT, ILLINOIS, OCTOBER TERM, A. D. 1945 CALENDAR

On the Court's own motion it is ordered that the following numbered cases on the October Term Calendar, A. D. 1945, of said Court be and the same are hereby assigned to the Second Division Appellate Court for hearing and 500 determination, to-wit:

43515

PEOPLE OF THE STATE OF ILLINOIS

vs.

RALPH E. WHITE

And afterwards, on the 16th day of October, A. D. 1945, it being one of the days of the October Term, A. D. 1945 of said Court, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 267]

43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities Hereinafter Designated and Described, Appellants

Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below,

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vs.

RALPH E. WHITE and JOSEPH F. JANDA, Defendants below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including October 27th A. D. 1945, in which to file their briefs in said cause, as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the
501 same is hereby so extended.

And afterwards, on the 23rd day of October A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 268] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Appellees,

vs.

RALPH E. WHITE, et al., Appellants
Appeal from Cook Superior

43515

PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs Below

vs.

RALPH E. WHITE, et al., Defendants Below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including November 27th A. D. 1945, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises, doth order that said time be and the same is hereby so extended.

And afterwards, on the 30th day of October A. D. 1945,

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the following proceedings were had and entered of record in said cause, to-wit:

502 [fol. 269] 43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. LYMAN F. MARTIN, et al., Plaintiffs below

vs.

RALPH E. WHITE, et al., Defendants below
PEOPLE OF THE STATE OF ILLINOIS, Appellee

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This cause having this day been reached in the call of the docket, and counsel desiring to argue the same, and the Court, not being fully advised in the premises, doth order that said cause be taken under advisement on abstracts filed and on briefs of Appellant to be filed by November 27, 1945, and briefs of Appellee due 30 days thereafter and consolidated with cause General Number 43493.

And afterwards, on the 27th day of November A. D. 1945 it being one of the days of the October Term A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 270] 43493

503 THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities hereinafter designated and described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below

vs.

RALPH E. WHITE and JOSEPH P. JANDA, Defendants below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee

vs.

BLEED THROUGH

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including December 27th A. D. 1945, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 26th day of December A. D. 1945, it being one of the days of the December Term A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 271] 43493

504 THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Appellees

vs.

RALPH E. WHITE and JOSEPH P. JANDA, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below

vs.

RALPH E. WHITE and JOSEPH P. JANDA, Defendants below
PEOPLE OF THE STATE OF ILLINOIS, Appellee

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including January 7th A. D. 1946, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 29th day of January A. D. 1946, it being one of the days of the December Term A. D. 1945, the following proceedings were had and entered of record in said cause, to-wit:

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[fol. 272] 43493

505 THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John Gazarek and Frank J. Kucera, Appellees

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities hereinafter designated and described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below

vs.

RALPH E. WHITE, et al., Defendants below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellees by their counsel and moved the Court to extend the time to and including March 8th A. D. 1946, in which to file their briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 19th day of March A. D. 1946, it being one of the days of the February Term A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 273] 43493

506 THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the Capacities hereinafter designated and described, Appellants
Appeal from Cook Superior

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43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below

vs.

RALPH E. WHITE and JOSEPH P. JANDA, Defendants below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

This day came Appellants by their counsel and moved the Court to extend the time to and including April 8th A. D. 1946, in which to file their reply briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 10th day of April A. D. 1946, it being one of the days of the April Term A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 274] 43493

507 THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, in the capacities hereinafter designated and described, Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below

vs.

RALPH E. WHITE and JOSEPH F. JANDA, Defendants Below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellees

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

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This day came Appellants by their counsel and moved the Court to extend the time to and including April 22nd A. D. 1946, in which to file their reply briefs in said cause as per affidavit filed herein, and the Court being fully advised in the premises doth order that said time be and the same is hereby so extended.

And afterwards, on the 29th day of May A. D. 1946, it being one of the days of the April Term A. D. 1946, there was filed in the office of the Clerk of said Appellate Court the written opinion of this Court, which opinion is in the words and figures following, to-wit:

[fol. 275] 43515

508 THE PEOPLE OF THE STATE OF ILLINOIS ex rel. LYMAN F. MARTIN et al., Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, On appeal of RALPH E. WHITE, Appellant

Appeal from Superior Court, Cook County

Mr. Presiding Justice Friend delivered the Opinion of the Court.

This appeal was consolidated with cause No. 43493. In that case the principal question presented was whether the Superior court had jurisdiction of the mandamus proceeding brought by relators. The facts and circumstances of these two proceedings are sufficiently set forth in our opinion in that case and need not be repeated here. Inasmuch as we have held that the Superior court had jurisdiction of the mandamus case, the only question presented upon this appeal is whether disobedience of the mandamus judgment entered in case No. 43493 constitutes contempt.

The cases in this state are uniformly to the effect that it is contumacious to disobey an order which the court has jurisdiction to enter, even if the order is clearly erroneous. In the recent case of *Cummings-Landau Co.* v. *Koplin*, 386 Ill. 368, the court held that "The principle is of universal force that the order or judgment of a court having jurisdiction is to be obeyed, no matter how clearly it may be erroneous. This is the rule whether the contempt be technically defined as criminal or civil. On an appeal from an order committing a defendant for contempt for the violation of an order of the court, no error in such prior order can be

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considered. The only question as to such prior order that can be considered is whether the court had jurisdiction to make it." In *Ash Co. v. Garment Workers' Union*, 290 [fol. 276] Ill. 301, the court said that "It is so universally settled law as to require no citation of authorities, that the orders and judgments of a court having jurisdiction must be obeyed until reversed or set aside in a direct proceeding for that purpose, and in a proceeding for contempt for violating an injunction it cannot be urged that granting the injunction was erroneous. Unless absolutely void it is binding on the parties and must be obeyed."

Since, in our opinion, the court had jurisdiction in 509 the mandamus case, as heretofore stated and held in opinion No. 43493, defendant was bound to obey the judgment, and inasmuch as he failed and refused to do so, the finding and order holding him in contempt was properly entered and is accordingly affirmed.

Order Affirmed.

Scanlan and Sullivan, JJ., concur.

[fol. 277] And afterwards, on the same day to-wit: the 29th day of May A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 278] 43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE, et al., Defendants below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

On this day came again the said parties, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the contempt order of June 1st A. D. 1945, aforesaid is there anything erroneous, vicious, or defective; and that in the record there is no

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error: Therefore, it is considered by the Court that the contempt order of June 1st A. D. 1945, aforesaid, be Affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said Lyman F. Martin, et al., recover of and from the said Appellant their costs, by them in this behalf expended, to be taxed, and that they have execution therefor.

And afterwards, on the 12th day of June A. D. 1946, 510 it being one of the days of the June Term A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 279]

43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., Appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE, et al., Defendants below
PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

The Court having considered the petition of Appellant praying for a rehearing in said causes, and being now fully advised in the premises, doth order that the prayer of said petition be and the same is hereby denied.

And afterwards, on the 18th day of June A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

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511 [fol. 280] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

VS.

RALPH E. WHITE and JOSEPH F. JANDA, etc., appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

VS.

RALPH E. WHITE, et al., Defendants below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

VS.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

The Court having considered the motion of Ralph E. White and Joseph F. Janda Appellants in cause General Number 43493 and Ralph E. White Appellant in cause General Number 43515 that the issuance of the mandate herein be stayed until the time for the filing of a petition in the Supreme Court of Illinois for leave to appeal to review the judgments of this Court in said causes shall have expired, or if such petition shall have been filed within the proper time, then until said petition shall have been granted or refused; and the Court, being fully advised in the premises, doth grant said motion and doth order that the issuance of the mandates in said causes be and the same are hereby stayed accordingly.

And afterwards, on the 1st day of July A. D. 1946, the following proceedings were had and entered of record in said causes, to-wit:

512 [fol. 281] IN RE PUBLICATION OF WRITTEN DECISIONS OF THIS COURT

It is hereby ordered that the cases, the numbers and titles of which are given below, the written decisions of this Court filed the 29th day of May A. D. 1945, shall be published in full in the Appellate Court Reports.

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And the decisions so filed which are not designated below shall be published by including an adequate abstract of such written decisions.

43515

PEOPLE ex rel. MARTIN, et al.,

vs.

WHITE, et al.

And afterwards, on the 1st day of October A. D. 1946, it being one of the days of the October Term A. D. 1946, the following proceedings were had and entered of record in said cause, to-wit:

[fol. 282] 43493

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, Cecil Grgurich, Joseph Cerny, Henry J. Metz, John F. Gazarek and Frank J. Kucera, Appellees,

vs.

RALPH E. WHITE and JOSEPH F. JANDA, etc., appellants
Appeal from Cook Superior

43515

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Plaintiffs below,

vs.

RALPH E. WHITE, et al., Defendants below
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

RALPH E. WHITE, Appellant
Appeal from Cook Superior

The Court having considered the motion of Appellants that the issuance of the mandate herein be stayed until the time for the filing of the petitions in the Supreme Court
513 of the United States for a Writ of Certiorari to review the judgments of this Court in said causes shall have expired without any such petitions having been filed, and if such petitions for said writs shall have been filed within the proper time, then until said writs of certiorari shall have been granted or refused, and the Court being fully advised

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in the premises, doth grant said motion and doth order that the issuance of the mandates in said causes be and they are hereby stayed accordingly.

And afterwards, on the 4th day of October A. D. 1946, it being one of the days of the October Term A. D. 1946, there was filed in the office of the Clerk of said Appellate Court, a certified copy of an order of the Supreme Court of Illinois, denying the petition for leave to appeal in said causes, which said order is in the words and figures following, to-wit:

[fol. 283] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September in the year of our Lord, one thousand nine hundred and forty-six, within and for the State of Illinois.

Present: Walter T. Gunn, Chief Justice; Justice Clyde E. Stone, Justice Loren E. Murphy, Justice William J. Fulton, Justice Francis S. Wilson, Justice June C. Smith, Justice Charles H. Thompson. George F. Barrett, Attorney General. Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it Remembered, that, to-wit, on the 11th day of September, 1946, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

514 No. 29771

RALPH E. WHITE and JOSEPH F. JANDA, Petitioners,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel., LYMAN F. MARTIN, et al., Respondents

Petition for Leave to Appeal from Appellate Court, First District
(45 S. 6174-43515)

And now on this day the Court have duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the

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prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioners costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 3rd day of October, 1946.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[Endorsed:] No. 43515. Supreme Court of Illinois. Denial Petition Leave to Appeal. Filed Appellate Court, Oct. 4, 1946. Sheldon W. Govier, Clerk.

[fol.284] I, Sheldon W. Govier, Clerk of the Appellate Court, in and for the First District of the State of Illinois, and keeper of the records, files and seal thereof, Do Hereby Certify that the pages 1 to 227 inclusive attached to the record in the case of People ex rel., Martin, et al., Appellees vs. White, et al., Appellants our General Number 43493 which was consolidated in this Court with the contempt proceedings in the case of People of the State of Illinois,
515 Appellee vs. Ralph E. White Appellant, our General Number 43515, on one set of abstracts filed in this Court under our General Number 43493, are a true copy of the consolidated abstracts of Record filed in this Court on October 13th A. D. 1945, in the case of People, ex rel., Martin et al., Appellees vs. White, et al., Appellants our General Number 43493 and in the contempt proceedings in the case of People of the State of Illinois, Appellees vs. Ralph E. White, Appellant our General Number 43515.

I further certify that the foregoing pages 228 to 251 inclusive are a true, full and complete Transcript of the Record of proceedings of said Appellate Court in the case of The People of the State of Illinois, Appellee vs. Ralph E. White, Appellant, of record in my office in cause our General Number 43515, and also of the opinion of said Appellate Court rendered herein and filed in said cause on the 29th day of May A. D. 1946, and also a certified copy of the order

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of the Supreme Court of Illinois denying Leave to Appeal in said cause which was filed in said Appellate Court on the 4th day of October A. D. 1946, in said cause, as all of the same now appear on file in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 7th day of October in the year of our Lord one thousand nine hundred and forty-six.

Sheldon W. Govier, Clerk of the Appellate Court of the First District, Illinois. (Seal.)

(7781)

516 IN THE CIRCUIT COURT OF COOK COUNTY

* * (Caption No. 45-C-2198) * *

Report of Proceedings at the hearing of the above entitled case before the Honorable Harry M. Fisher, Judge of said Court, on the 26th day of March, A. D. 1945.

Present:

Mr. Urban A. Lavery,
Appeared for petitioners and relators;
Mr. William J. Tuohy, by
Mr. Gordon B. Nash,
Appeared for defendant.

517 The Clerk: People ex rel Lyman Martin, et al, vs. The Honorable Edmund K. Jarecki.

The Court: Pardon me, did you file an Answer to the original petition?

Mr. Nash: No, we did not, Your Honor.

The Court: Did you file any pleading?

Mr. Nash: No, we have not.

Mr. Lavery: Technically they do not have to until tomorrow morning because our writ is returnable the 27th.

The Court: Yes.

Mr. Lavery: It is only by courtesy that they have come in.

The Court: Let the record show that the defendant appears in open court by his counsel and consents to an immediate hearing and moves the Court oretanus to dismiss the petition and that as grounds therefor states that the petition on its face is not sufficient to justify the granting of the relief prayed.

Is that all?

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Mr. Nash: That satisfies me.

The Court: All right.

Mr. Lavery: I want to make this statement, if Your Honor please, that after leaving the court room this morning I went to Mr. Gordon Nash's office and Mr.
518 Shamberg's office, Assistant State's Attorneys, and told them what Your Honor had said in substance about the representation of the Village of Lyons.

I told them, as I think they may have known, that Mr. Joseph Bulger was the attorney of the Village of Lyons. His name appears here in some of these papers as Notary Public. In my presence Mr. Jacob Shamberg called Mr. Bulger and told him that fact, that the matter was on hearing this morning, and Mr. Bulger is here in court.

Mr. Bulger: Your Honor, if this is an attempt to have me enter my appearance in this matter I am going to object to any such move. I am here simply as an observer. My people have not been served and are not parties to this proceeding.

Mr. Lavery: That is all I want him here for, Your Honor. I do not want him as a party. I think it would be improper for him to enter his appearance.

The Court: Well now, I will hear from you. First of all, was there an order giving leave to file an amended petition?

Mr. Lavery: There was no draft order on that.

The Court: Let the record show leave to file amended petition instanter, and it is agreed by the parties that the oral motion made to dismiss the original petition may
519 stand as to the amended petition.

Go ahead. I want to hear from you.

Mr. Nash: Your Honor, we have read the transcript of the testimony that was had before Judge Jarecki, stating, according to the statute, as a member of that board, and it is clearly indicated in that transcript that he took the position of allowing this ticket as represented by Mr. Lavery to appear on the ballot. So our position is neutral in the matter.

The Court: Very well. You will draw an order directing Judge Jarecki to enter a finding that the Electoral Board as convened was not properly constituted under the law and, therefore, should be dissolved and that he should return forthwith all the nominating papers—

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Mr. Lavery: To the Village Clerk.

The Court: —to the village authorities without any action thereon.

Mr. Lavery: May I make a statement, Your Honor?

The Court: Yes.

Mr. Lavery: Your Honor, in the hearing previous there was raised the question which I think has some pertinence here or would have had, and I am just stating this for the information of the Court. I have asked the Clerk of
520 the Circuit Court who would be the Judge of the Circuit Court longest in point of service, excluding those members of the Circuit Court who are on the Appellate Court bench. For Your Honor's information I have the memorandum here which Mr. Sullivan gave me.

The Court: It is too late now anyway, is it not, to constitute a proper board?

Mr. Lavery: In my judgment it is, Your Honor.

Mr. Lexa: Yes.

Mr. Lavery: Furthermore, I see no power or authority on their behalf as their counsel to suggest anything in that respect. I am merely putting this information before the Court. If Your Honor wants me to I will read into the record what this information is.

The Court: All right.

Mr. Lavery: Let the record show that Mr. George Sullivan, the Clerk of the Circuit Court—

The Court: Let the record show we take judicial notice.

Mr. Lavery: That the Court takes judicial notice of the fact that—

The Court: Excluding those members of the Circuit Court who are now serving in the Appellate Court,
521 the judges oldest in point of service of the Circuit Court are Judge Fisher and Judge Lynch.

Mr. Lavery: Both of whom received their commission on the same day.

The Court: Both of whom received their commission on the same day.

Mr. Lavery: June 20th, 1921. We will draw that order?

The Court: Do you think Judge Jarecki would want to reconvene that commission?

Mr. Lavery: I make this suggestion, Your Honor, that Mr. Nash and I go to Judge Jarecki and explain to him the informal order that Your Honor has entered and ask

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him if he has any suggestions and to explain to him this additional information and ask him if he has any suggestions.

Your Honor is already informed of the fact that Judge Jarecki has suspended the proceedings before the board until tomorrow at noon.

The Court: He can call in, can he not, Judge Lynch, since this is pending before me?

Mr. Lavery: That, of course, is for him to determine.

The Court: If he would prefer that.

Mr. Lavery: I want to put that up to him.

522 The Court: Then, I won't enter the order.

Mr. Lavery: I think that is proper, and suggest that Your Honor continue this until two o'clock, if that would be an order.

The Court: Make it 2:30.

Mr. Lavery: Thank you.

(Whereupon the further hearing of the above entitled case was set for 2:00 o'clock P. M. of the same day, being March 26th, 1945).

523 State of Illinois,
County of Cook. } ss.

BEFORE THE
ELECTORAL BOARD OF THE VILLAGE OF LYONS

In the Matter of the Candidates of the Regular People's Party } Election of April 17, 1945.

Present:

Hon. Edmund K. Jarecki,
Chairman of Electoral Board;
Mr. Gordon Nash,
Assistant State's Attorney.

TRANSCRIPT OF PROCEEDINGS

The following is a report of proceedings had in the above named matter in the chambers of Judge Edmund K. Jarecki, County Building, Chicago, Illinois, on Monday, March 26, 1945, at 12:30 o'clock P. M.

Present:

Mr. Urban A. Lavery, and

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Mr. Frank J. Lexa,
representing the Regular People's Party.

524 Mr. Lavery: We have been sent here by Judge Fisher to report to Your Honor what transpired at a hearing before him this morning.

The Chairman: Yes, sir.

Mr. Lavery: With your permission I will outline what happened.

The Chairman: Yes.

Mr. Lavery: At 11:30 Judge Fisher set this matter for a hearing.

The Chairman: Yes.

Mr. Lavery: On the mandamus petition and amendment. Mr. Joseph Imburgio Bulger, who was the village attorney of Lyons, was there at the suggestion of Mr. Jacob Shamberg, who called him this morning.

The Judge heard the matter, and I am going to ask the court reporter to read to Your Honor the Order granting the mandamus writ which Judge Fisher entered informally and directed us to bring a copy of it at 2:30, and I wanted to say that he said before it is formally entered he wanted us to appear here, and I will have the court reporter read what he said.

(Whereupon the above mentioned statement was read by the reporter, and is in words and figures as follows, to wit:)

525 "Judge Fisher: Very well, I will draw an order directing Judge Jarecki to enter a finding that the Electoral Board as convened was not properly constituted under the law and therefore should be dissolved and that he should return forthwith all the nominating papers—

Mr. Lavery: To the Village Clerk.

The Court: To the village authorities without any action thereon."

The Chairman: Yes.

Mr. Lavery: That will be the order to be entered at 2:00 o'clock, but Judge Fisher in the hearing this morning raised another point which he asked us to suggest to you.

Your Honor is familiar with this statute which provides that in the absence or disqualification of the President of the Village Board the County Judge comes into his place. Your Honor probably recalls that there is another provision that indicates if the other members of that Muni-

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cipal Electoral Board are disqualified because they are candidates, then the oldest Circuit Court Judge, oldest in point of service, shall take the place of that person.

Judge Fisher said, "It is obvious to me that Mr.
526 White was illegally on this board and that Mr. Janda, who is the actual Village Clerk, was disqualified because he is a candidate and, therefore, the board should have been constituted by Judge Jarecki as Chairman, and a member of the Circuit Court as substitute for the Clerk. Now then the question came up as to who was the oldest member of the—

The Chairman: The Circuit Court?

Mr. Lavery: Of the Circuit Court. In actual point of time it is Judge Scanlon, but Judge Fisher pointed out that since he is on the Appellate Court he informally suggested he was not within the strict terms of the statute. So we got the names of the oldest judge in point of service actually sitting in the Circuit Court, and the names were read into the record. They are Judge Harry Fisher and Judge Lynch, both of whom are identical in point of service.

Judge Fisher suggested that you might wish to start calling in Judge Lynch to legally organize this board and proceed with the hearing, or you might prefer to have him enter this mandamus order.

The Chairman: I would rather have the mandamus order entered.

527 Mr. Lexa: That was the purpose of coming in today, whatever you preferred to do.

The Court: I think the mandamus order is the proper order in this case here, because the papers were sent to me. I have no way of knowing at that time who the Clerk is there. I got the papers and I got the names of those who are on the Board from the Clerk of that Village Board. Of course I naturally called that meeting. I can't go to work and call another one now on account of the time has gone by. If another Electoral Board would be called by me I don't think under that statute I have authority to change the calling of the board.

Mr. Lavery: We discussed that before Judge Fisher.

The Court: There is a question in my mind in that act when a vacancy occurs who determines who that person is who calls it.

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Mr. Lavery: Exactly.

The Chairman: I don't know that. It so happens I am the one that is enumerated there, but the other vacancies, how they are filled and who goes to work and determines that, I don't know. I don't think the Chairman of the Board has a right to determine who the members of that board are. The statute don't say so.

528 Mr. Lavery: Have you any comment to make, Mr. Gordon Nash?

Mr. Nash: No.

The Chairman: Tell the Judge I will be glad to abide by his mandamus. I think Judge Fisher is absolutely right.

(Which was all of the proceedings had in the above entitled case.)

529 IN THE CIRCUIT COURT OF COOK COUNTY

* * (Caption No. 45-C-2198) * *

## TRANSCRIPT OF PROCEEDINGS

The following is a transcript of proceedings had before the Honorable Harry M. Fisher, one of the Judges of said Court on the 26th day of March, A. D. 1945, at the hour of 2:30 P. M.

Present:

Mr. Urban A. Lavery and
Mr. Frank J. Lexa,
appeared on behalf of the plaintiffs.
Mr. William J. Tuohy, by
Mr. Gordon Nash,
appeared on behalf of the defendant.

530 Mr. Lavery: If Your Honor please, I want first to report with respect to what we did in connection with Your Honor's suggestion about speaking to Judge Jarecki.

Mr. Nash and Mr. Lexa and I went down and saw Judge Jarecki and had the reporter read to him the part of the record which contained Your Honor's suggested draft of the order.

I also told Judge Jarecki Your Honor's suggestion about —I said that out of courtesy Your Honor had asked us to appear before Judge Jarecki and the suggestion, if Judge Jarecki wanted to he might consider the question of re-

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vising the personnel of his Board. He said he appreciated that very much but he felt under the statute he had no such authority.

After some discussion he said that if Your Honor entered this writ he would promptly obey it and I think I am entitled to say he said, in his opinion Your Honor is right in issuing the writ. That was the end of the matter.

I have a draft of a judgment of mandamus. I have shown a copy to Mr. Nash, counsel for the defendant. I have put in there some preliminary recitation which I think are proper under the circumstances and off the record, I don't want the reporters to take this.

(Off the record.)

531 The Court: I struck that out. I am putting in where you said "dissolved said Electoral Board" I am putting in "dissolved said purported Electoral Board."

Which were all the proceedings had on the hearing of the above cause.

532 IN THE CIRCUIT COURT OF COOK COUNTY

• • (Caption—45-C-2198) • •

## AMENDMENT TO PETITION FOR MANDAMUS

Come now Relators and Petitioners herein by Urban A. Lavery, their attorney, and after leave of Court being granted therefor, file herein this Amendment to the Petion for Mandamus heretofore filed herein on to-wit, March 22, 1945.

Relators and Petitioners amend their said Petition for Mandamus by adding thereto at the foot of paragraph numbered XVI thereof (and before the prayer for relief, etc.) the following additional paragraphs as hereinafter numbered:

XVII. Relators and Petitioners show that one Ralph E. White signed the document dated March 17, 1945, addressed to "Honorable Edmund K. Jarecki, County Judge, Cook County, Illinois" (copy of which document is attached to the original Petition for Mandamus herein and made a part thereof as Exhibit B), and the said Ralph E. White signed the said document as "Yours very truly, Ralph E. White, Village Clerk" as shown by the said document

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itself; that the said Ralph E. White, purporting to act
533 as such Village Clerk of the Village of Lyons, in and by the said document (exhibit B), purported to identify officially his own name (by virtue of his purported claim to be Village Clerk) as one of the members of the so-called "Municipal Officers Electoral Board."

Relators and Petitioners show and charge that the said Ralph E. White at the time of his signing and issuing and mailing and forwarding the said document dated March 17, 1945, above described (exhibit B) was not and is not now the Village Clerk of the Village of Lyons, Cook County, Illinois; but on the contrary, relators and petitioners show that for more than a year last past, and at the time the said Ralph E. White signed the said document last mentioned, and at the time of the filing of the Petition for Mandamus herein, and at the time of the filing of this amendment thereto, the Village Clerk of the Village of Lyons was one Joseph Janda, residing at 8312 West 44th Place, in the said Village of Lyons, and therefore relators and petitioners charge:

(a) That the actions and doings of said Ralph E. White in the premises, as recited in this paragraph numbered XVII, were false and malicious and illegal for the reason that said Ralph E. White was not, at the time of his signing of said document, and is not now the Village Clerk of the Village of Lyons;

534 (b) That the actions and doings of said Ralph E. White in the premises were contrary to the law and were a violation of the Criminal Code of the State of Illinois and constituted a claim against the People of the State of Illinois, in violation of Chapter 38, Section 260, Illinois Revised Statutes, which section of the Criminal Code provides as follows:

"Section 260. *Falsely Assuming an Office.* Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy sheriff, coroner, constable, police officer, watchman, or *other officer,* and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be confined in the county jail not exceeding one year or fined not to exceed $500."

And relators and petitioners show that the acts and doings of said Ralph E. White in the premises, as

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above recited, constituted and constitute a violation of law and of that particular statute in two respects; namely; first, that the said Ralph E. White "assumed and pretended" to be an officer of the State of Illinois, to-wit, Village Clerk of said Village of Lyons when he was not such Village Clerk; second; that the said Ralph E. White required another person, to-wit: The Honorable Edmund K. Jarecki defendant herein, to "aid and assist him in a matter pertaining to the duty" of the office of the Village Clerk of the Village of Lyons when he, the said Ralph E. White, was not Clerk of the said Village of Lyons. And by reason of the matters and things alleged in this paragraph XVII, the defendant, the Honorable Edmund K. Jarecki, could not lawfully act as Chairman of the said Munici-
535 pal Officers Electoral Board and could not accept or receive any papers or documents purporting to have been sent to and filed with him as Chairman of said Electoral Board as recited in and as purports to have been done in the said document dated March 17, 1945, (exhibit B), purporting to have been signed by the said Ralph E. White as Village Clerk; and therefore, because of the particular matters and things recited and alleged in this paragraph XVII, the said defendant was and is without any authority or jurisdiction in the premises whatsoever.

XVIII. Relators and Petitioners show that on to-wit, the 23rd day of March, 1945, the defendant, the Honorable Edmund K. Jarecki, notwithstanding the matters and things recited in the paragraph numbered XVII above, pretending and purporting to act as Chairman of the Municipal Officers Electoral Board, called the said Board into session in the main court room of the County Judge of Cook County in the County Building, in the City of Chicago, and then and there purported to organize the said Electoral Board at about 10:30 A. M. of the said day, in accordance with the provisions of Section 10-9 of Chapter 46 of the Revised Statutes of the State of Illinois and then and there pretended to proceed to a hearing upon the Objections purported to have been forwarded to him as such Chairman, a copy of said Objections being attached to the original Petition for Mandamus herein as Exhibit A and made a part of said original petition; that at the said

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pretended hearing of the said Electoral Board petitioners and relators were present with their counsel, Messrs.
536 Urban A. Lavery and Frank J. Lexa, and the said relators and petitioners thereupon and at the last mentioned, and in the presence of the defendant as such Chairman, and in the presence of said Ralph E. White and Louis Hoffman purporting to act as the two other members of the said Electoral Board, challenged the right of the said Ralph E. White to do any acts or things as the said Village Clerk of said Village of Lyons for the reason (as there and then stated by relators and petitioners by their counsel) that the said Ralph E. White was not then and there the duly appointed or acting Village Clerk of said Village of Lyons.

And relators and petitioners show that notwithstanding such challenge of authority and such want of authority of the said Ralph E. White in the premises, nevertheless, the said defendant, The Honorable Edmund K. Jarecki, proceeding to go forward with a pretended and purported hearing of said Municipal Officers Electoral Board on the said Objections already mentioned and described, and therefore, because of the matters and things recited and alleged in this paragraph XVIII, the said defendant was and is without any authority or jurisdiction in the premises whatsoever.

XIX. Relators and petitioners attach to this Amendment (as exhibit H and make it part of the original Petition for Mandamus filed herein) a true and correct stenographic record of the proceedings before the so-called Municipal Officers Electoral Board, of which the de-
537 fendant purported to act as Chairman on to-wit, March 23, 1945, the said transcript being incorporated in the Petition for Mandamus filed herein and made a part hereof, for the information of this Court.

Respectfully submitted.

LYMAN F. MARTIN, Henry J. Metz
Cecil Grurich, John F. Gazarek,
Joseph Cerny, Frank J. Kucera.

(signed) URBAN A. LAVERY
URBAN A. LAVERY, their Attorney

(Signed)
URBAN A. LAVERY
Attorney for Petitioners
and Relators

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538 State of Illinois,
County of Cook. } ss.

LYMAN F. MARTIN, being first duly sworn on oath deposes and says that he is one of the relators and petitioners in the above entitled cause and that as such he is authorized to make this affidavit on their behalf; that he has read the above and foregoing Amendment to the Petition for Mandamus heretofore filed herein; that he knows the contents thereof, and that the same is true in substance and in fact.

(Sgd) Lyman F. Martin.

Subscribed and sworn to before me this 26th day of March, 1945.

(Sgd) Marcus J. Golden,
*Notary Public.*

539 State of Illinois,
County of Cook. } ss.

BEFORE THE VILLAGE BOARD OF THE VILLAGE OF LYONS

| | |
|---|---|
| In the Matter of the People's Regular Party of Said Village | Election of April, 1945 |

Present:

Hon. Edmund K. Jarecki, Chairman
Mr. Ralph E. White
Mr. Louis Hoffman, Members;
Mr. John Daly, Asst. Attorney for the Election Commissioners' Office.

TRANSCRIPT OF TESTIMONY

The following is a transcript of testimony taken and proceedings had in the above named matter at 600 County Building, Chicago, Illinois on the 23rd day of March, A. D. 1945, at 10 o'clock A. M.

Present:

Mr. Urban A. Lavery and
Mr. Frank J. Lexa
Representing the Regular People's Party
Exhibit H-1

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540 The Chairman: The objection of Karl Schimmelphennig to the certificate of nomination of the Regular People's Party. Are the Clerk and other officers here from that department? Mr. White and Mr. Hoffman are from Lyons.

Mr. White: Yes, sir.

The Chairman: Sit down at the table over here with me, will you please? They are objecting to what?

Mr. Daly: The Regular People's Party.

The Chairman: They are objecting to the petition on the ground they have too many names?

Mr. Daly: No they object to the petition on the ground the Regular People's Party had no right to caucus in the Village of Lyons.

The Chairman: Why not?

Mr. Daly: It is a village over 5,000.

The Chairman: It is a Village of 5,000. What is the federal census?

Mr. Daly: 4,960 as of 1940. That is the last regular census.

The Chairman: That is all we are governed by?

Mr. Daly: Yes.

541 The Chairman: In the statutory proceedings we go by the federal census. So I am for putting the names on and let them run.

Mr. Daly: I want to point out this other party in the Village of Lyons. They have also caucused.

The Chairman: They have a right to. They have less than 5,000 according to the federal census of 1940. That is the thing that governs. They may jump up or jump down but the census governs, the federal census. You may have 6500 there.

Mr. White: There is the total registration.

The Chairman: That is right. I am not saying it is not. According to the statute I am governed by the federal census. That is the thing that determines it for the last ten years. They proceed on that basis. I am for letting the names on and let them run on the ballot. Let them run and let the people decide for or against and then putting it to a vote.

Mr. White: I would like to hear these objections.

The Chairman: Where are they? I am ready to act. I am not going to sit here all day for them.

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Mr. Lavery: May I make a suggestion, Your Honor? I represent the People and I object to this. There is something that just came up this morning. I think this Chair-

EXHIBIT H-2

542 man ought to know it. The notice here purports to be sent out by Mr. White as Village Clerk, and I have only learned this morning that for a year and a half Mr. White has resigned as Village Clerk. For the last year and a half he has been Chief of Police of the Village. He has taken his office as Chief of Police and has been sworn in as Chief of Police. Therefore that vitiates any other proceedings here. I have only learned that this morning. I think Mr. White will admit the facts.

The Chairman: I will tell you, that is another issue. There is only one issue before us, and that is the way we are going. If the federal census determines that village to be below 5,000 that governs.

Mr. Lavery: There is no question about that.

The Court: I am for putting the names on the ballot. Are you for or against it?

Mr. Hoffman: If the statute says so.

Mr. White: Where is that census gotten from?

Mr. Daly: That is the federal census that was gotten from the Public Service Department of the Chicago Tribune.

Mr. Lexa: Or published in the Rand McNally Atlas. That is the official census. It is a 1944 Atlas.

EXHIBIT H-3

543 The Chairman: It is generally published all over.

Mr. Lavery: It is common knowledge.

Mr. Lexa: The law says you must take judicial notice.

The Chairman: This isn't in court. This is the Electoral Board. That is why I am not sitting on the bench. The Court has to take judicial notice, and I am taking judicial notice. The Clerk tells me they got 6200. They may have 6,000 in there.

Mr. White: According to the OPA statistics it is approximately 6200, I believe.

Mr. Lexa: Let me get the section of the Cities and Villages Act, Your Honor.

BLEED THROUGH

Where is the section of the statute, of the Cities and Villages Act?

The Chairman: We will take this right out: (reading)

"Whenever in this Act any provision thereof is based upon the number of inhabitants, (the number of inhabitants) of a city or village shall be determined by reference to the latest census taken by authority of the United States or of this State or of such city or village; and it shall be the duty of the Secretary

EXHIBIT H-4

544 of States, upon the publication of any State or United States census, to certify to each city or village the number of inhabitants, as shown by such census. Any city or village may be ordinance provide for the taking of a census of the population thereof, in order to determine the number of such population for any and all purposes of this Act, and the several courts in this state shall take judicial notice of the population of any city or village, as the same may appear from the latest Federal, State, City or Village census so taken."

Mr. White: State or municipality. That's the way I read it.

The Chairman: This is technical. This is merely something to deprive a man of an opportunity to run or the public to express their wishes.

What is the finding of the board:

Mr. White: No.

Mr. Hoffman: I favor voting no.

EXHIBIT H-5

545 The Chairman: What do you mean, no?

Mr. White: To be stricken from the ballot.

The Chairman: I am against it, two of the men of the Village voting to keep these people off the ballot. Let it be so recorded. You have the record to that effect.

What is the next case?

Mr. Lavery: I didn't hear the voting of Mr. Hoffman.

Mr. Hoffman: No was the vote.

The chairman: It is purely political. You can see these men are trying to keep the men off the ballot.

Mr. White: I am not interested in who is running.

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Mr. Chairman: That is all.

Mr. Lavery: If the Commissioner please, may I make a point?

The Chairman: Yes.

Mr. Lavery: I again raise the point that Mr. White is not the Village Clerk.

The Chairman: That is outside of the point in this case. Raise it in the mandamus proceedings. If you declare the Board as illegal that determines the whole question.

## EXHIBIT H-6

546 Mr. Lavery: I would like this, Mr. Chairman. I won't take but a moment, I would like the Chairman of this Board to suspend issuing the order here for a few days to give us an opportunity to try out this question. I think we are entitled to that.

The Chairman: When is that matter coming up here?

Mr. Lavery: It will come up Tuesday. It will not in any way affect the pending of this matter.

The Chairman: I will hold it until Tuesday noon.

(Which was all proceedings had in the above entitled matter.)

## EXHIBIT H-7

547 In the Circuit Court of Cook County

* * (Caption—45-C-2198) * *

### JUDGMENT IN MANDAMUS

This matter coming on to be heard in open court before the undersigned as one of the judges of the Circuit Court of Cook County; and the plaintiffs being represented in court by Urban A. Lavery, their attorney; and the defendant being represented in court by his attorney, William J. Tuohy, states attorney of Cook Countyby Gordon Nash, assistant state's attorney, and having duly entered his appearance herein by said attorney; and this matter being submitted to the Court on the merits by agreement of the plaintiffs by the said attorneys and the defendant by his said attorney; entered their oral motion ore tenus to dismiss the Petition for Mandamus as amended; and the Court having considered the Petition for Mandamus herein

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as amended and the said motion of the defendants above mentioned. And having heard arguments of counsel for both plaintiffs and defendant in the premises, doth find the issues for the plaintiffs and against the defendant upon the defendant's said motion; and the defendant having failed to plead further in the premises:

The Court Now Finds that the Municipal Electoral Board for the Village of Lyons, mentioned and described in the said Petition for Mandamus as amended, was illegally constituted; and was particularly illegally constituted for the reason that one Ralph E. White, purporting to act as a member of said Electoral Board by virtue of his being Village Clerk of the Village of Lyons, was not in truth and in fact Clerk of the Village of Lyons at the time of the convening and hearing of the said Electoral Board and therefore had no power or authority to act as a member of said Electoral Board.

548 Wherefore the Court doth enter the following judgment in mandamus, that is to say: The said defendant, the Honorable Edmund K. Jarecki, purporting to act as Chairman of the said Municipal Electoral Board of the Village of Lyons is Hereby Directed and Ordered to enter a finding in the proceedings of the said Board, to the effect that the said Electoral Board as convened was not properly and lawfully constituted under the law, and that the said Electoral Board, therefore, should be dissolved; and the said defendant is further Ordered and Directed, forthwith, to return all certificates of nomination or nomination papers and other documents now in his possession as such purported Chairman of said Electoral Board, back to the proper Village authorities of the Village of Lyons, without any action whatever thereon by the said purported Electoral Board; and the said defendant is further ordered forthwith to dissolve said purported Electoral Board.

ENTER (Sgd.) HARRY M. FISHER
Judge of the Circuit Court
of Cook County

Dated March 26,1945.

549 State of Illinois,} ss.
County of Cook.}

Alice B. Kirchman, being first duly sworn, on oath says that she is a court reporter doing business in the City of

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Chicago; that she reported in shorthand the proceedings had at the hearing of said cause on March 26, 1945, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains all the proceedings had at said hearing.

Alice B. Kirchman.

Subscribed and sworn to before me this 5th day of April, A. D. 1945.

Gerald J. Fitzgerald,
*Notary Public.*
(Seal)

550 IN THE CIRCUIT COURT OF COOK COUNTY

* * (Caption—No. 45-C-2198) * *

Report of Proceedings at the hearing in the above entitled case before the Honorable Harry M. Fisher, Judge of said Court, on the 2nd day of April, A.D. 1945, at the hour of 10 o'clock A. M.

Present:

Mr. Urban A. Lavery and
Mr. Frank J. Lexa,
Attorneys for petitioners;
Mr. Joseph I. Bulger,
Attorney for respondents
Ralph E. White and Louis Hoffman.

Mr. Lavery: If Your Honor please, this is a supplemental proceeding in this Lyons election controversy in which Your Honor entered a mandamus judgment a week ago.

Now the background which your Honor should be advised of is this: On Tuesday, the following day, these two members of the electoral board, Messrs. White and Hoffman,
551 appeared in the County Building and eventually in Judge Jarecki's chambers, accompanied by Mr. Bulger, and asked Judge Jarecki to proceed with the hearing, and then he told them what had happened and they had brought him a copy of your Honor's mandamus judgment and a copy of his letter dissolving the Board. They thereupon announced they were going to hold what may be called a "rump" meeting in that court room and asked Judge Jarecki if they could use his court room for that purpose.

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Judge Jarecki said that he would not be a party to any such proceeding and that they could not use his court room.

Mr. Lexa: Told him they had dissolved the Board.

Mr. Lavery: They then went to another room in the County Building where they proceeded to hold a meeting and on the 28th of March they served the various parties, who are my clients, with a letter, and I think they tried to strike off with a letter signed by, I think, as Village, in which they gave notice of their action in holding that board meeting and reversing your Honor's decision, that the Board had jurisdiction, and proceeded to strike off the names of these people from the ballot.

552 Now this is a petition calling that matter, those facts, to your Honor's attention and asking that your Honor make an investigation to see whether there has not been contempt in this matter. We are anxious to have it heard for our purposes and I think the Court has an interest in finding out whether the two people concerned have not been contemptuous of the judgment of this Court. They have had notice of it and they have had notice of this petition. I have a copy of the notice.

The Court: Of course you should have made them parties in the first place. There wasn't any excuse for your not doing it.

Mr. Lavery: The excuse was a practical one. In the first place, as I told your Honor that day, your Honor could not have issued any judgment against them that very day. In the second place, there would have been an appeal from this judgment if that had been done, and that was the practical reason.

The Court: Now you want the Court to consider whether there would have been an appeal from this judgment without having made them parties?

Mr. Lavery: I want the Court to make an investigation.

The Court: The Court was of the opinion you should 553 have had them here.

Mr. Lavery: I recall that, your Honor, and I know that, but I think that there is a serious question involved here notwithstanding the point your Honor now makes.

I would like the privilege of filing the petition and the notice and asking your Honor to set it down.

Mr. Lexa: I would like also, with Mr. Lavery's and the Court's permission, to state this, that they received in evidence a copy of the mandamus which your Honor—

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The Court: You may enter a rule to show cause.
Mr. Lavery: That is what we would like.
The Court: Draw your order.
Mr. Bulger: May I say a few words, your Honor, without prejudicing the rights of my clients?
The Court: That will depend upon what you say.
Mr. Bulger: I just wanted to advise the Court these men were served on last Saturday night at 11 o'clock. They had no opportunity to talk to counsel, they had no opportunity of making arrangements to come down this morning, because they are in a war plant. I represent these two men. This is ex parte and I don't want to bind my clients, but will your Honor set a date or continue this matter until next Wednesday morning?
554 Mr. Lavery: That is agreeable to us if it is understood—
The Court: All right.
Mr. Lavery: Now the citation will be returnable next Wednesday?
The Court: Yes.
Mr. Lavery: Thank you.
Mr. Lexa: Will you have them in court at that time?
Mr. Bulger: I don't know what my advice to them will be, Mr. Lexa. I am asking the Court to continue the matter generally until Wednesday morning so I may have an opportunity—
Mr. Lexa: If the Court please—
The Court: I am issuing the rule this morning returnable Wednesday morning.
(Interruption).
Mr. Lavery: If your Honor please, in this Lyons election matter I have drafted a short order granting leave to file the petition presented this morning and the service of notice thereon and asking that citation be issued returnable Wednesday. I have shown a copy of it to Mr. Bulger.
The Court: You should enter a rule to show cause.
Mr. Lavery: Rule to show cause why citation should not be issued?
The Court: No, show cause why they should not be
555 punished for contempt of court.
(Interruption).
(Order entered as attached hereto).

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(Whereupon an adjournment was taken until Wednesday, April 4, 1945, at the hour of 10:30 o'clock A. M.)

556 State of Illinois,
County of Cook. } ss.

R. S. Freeman, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; that she reported in shorthand the proceedings had at the hearing in above entitled cause on the 2nd day of April, A. D. 1945, at the hour of 10 o'clock A. M., and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains all the proceedings at said hearing.

R. S. Freeman.

Subscribed and sworn to before me, this 5th day of April, A. D. 1945.

Ruth N. Chapman,
*Notary Public.*

(Seal)

557 In the Circuit Court of Cook County
* * (Caption—No. 45-C-2198) * *

Wednesday, April 4, 1945, 10:30 o'clock A. M.
Court convened pursuant to adjournment.
Present:

Mr. Jos. I. Bulger,
Mr. Frank J. Lexa.

Mr. Lexa: This matter comes on for hearing on return of the rule to show cause which your Honor rendered against the respondent Monday, returnable today.

We have a copy of counsel's petition for change of venue and I would like to state to the Court that I don't believe
558 that the petition complies with the statute, because they recite that the prejudice came to their attention on the 30th day of March.

The Court: They don't have to do that. They were just brought in. They don't have to show when the prejudice came to their attention at all.

Mr. Bulger: I ask to have the matter continued—

Mr. Lexa: Then I would also like to cite the case of People versus Doss to your Honor, on the question of the change of venue. In this particular case he must publish

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certain articles attacking the Grand Jury in connection with the proceeding in the Liberty Trust. There were five issues and he was tried for criminal contempt and he got one change of venue, then he asked for a second one, and then the action was amended, and on that ground he claimed it constituted a new cause of action and that he was entitled to another change, and the Court in answering that said that there is no authority for such a novel proposition, and they go on to say this:

"Apart from the fact that defendant has failed to satisfy procedural prerequisites with respect to his contention concerning change of venue and that substantive grounds adequately support the denial of his third petition, there is respectable authority for the proposition that statutory provisions relative to change of venue do not apply to proceedings to punish contempts, unless such proceedings are expressly included, eo nomine, in the statute."

559

And they cite three Supreme Court cases. (383 Ill. 307 at 311).

The Court: This is a rule to show cause why they should not be punished for contempt. Petition is denied.

Mr. Bulger: I prepared a Motion to Dismiss rather hurriedly and I would like an opportunity to prepare the argument and prepare some law on the motion and would like to have your Honor set a time for hearing.

I may ask leave to file an amendment to it later.

The Court: When will the election come up?

Mr. Lexa: The election will come up on the 17th, in less than two weeks. They have already indicated that they are not going to put us on the ballot regardless of what we do and how we proceed.

560

Mr. Lexa: The contempt in this case, your Honor, is something your Honor can determine very readily by a transcript of the proceedings which were taken by a court reporter and submitted to me by counsel for these respondents. I think this transcript is full of contempt and verifies and supports all of the allegations in my petition.

The Court: Who prints the ballots?

Mr. Lexa: The Village Clerk.

The Court: And who is the Village Clerk?

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Mr. Lexa: That is one thing we have not been able to determine definitely. We have alleged that Ralph White is not the Village Clerk for the reason that he accepted the appointment of Chief of Police and for the last eighteen months he has been acting as such, and that a man by the name of Joseph F. Janda has been sitting as Clerk pro tem and that he was appointed Clerk pro tem by the Village Clerk, and that he took the minutes of all proceedings at the Board, that he wrote the minutes of all council meetings and that in this particular election Ralph White has published notices of the election as Village Clerk.

The Court: How is the Village Clerk elected?

561 Mr. Lexa: The Village Clerk was elected four years ago in April and qualified on May 1, 1941.

The Court: Ralph White?

Mr. Lexa: That was Ralph White.

The Court: Then he resigned?

Mr. Lexa: Then he resigned.

The Court: Does the record show the resignation?

Mr. Lexa: Well, your Honor, here is the situation with respect to that.

Mr. Bulger: May I interrupt?

Mr. Lexa: Let me answer the Court.

Mr. Bulger: I want the Court to grant me time, there are a lot of questions to be answered.

The Court: I am not going to grant you time.

Mr. Bulger: Until Friday morning.

Mr. Lexa: If the Court please,—

The Court: I don't print the ballots.

Mr. Bulger: Your Honor, may I state we are in here on the rule to show cause.

Mr. Lexa: I had nothing to do with that at all.

Mr. Bulger: I would like an opportunity to argue my motion. A lot of questions are involved which don't appear even on the petition. I think the order of the Court is void and I would like an opportunity to argue my motion.

562 Mr. Lexa: This petition was served personally on Ralph White last Saturday. Counsel had examined my copy of the petition Monday in court. Louis Hoffman got a copy of it.

The Court: Who is the acting clerk?

Mr. Lexa: Joseph F. Janda, and he is running for re-election on the opposite—

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The Court: He is running for Village Clerk?

Mr. Lexa: He is running for Village Clerk. I have a telegram showing that Ralph White has been appointed, and I have one of the Trustees of the Village present in court now who will testify that Ralph White sent a letter to the Board resigning, and that the Board acted on the resignation and appointed Joseph F. Janda clerk pro tem. That is Joseph F. Janda. I also have a telegram—

The Court: Have you the minutes of their meeting?

Mr. Lexa: Your Honor, they have the minutes, I suppose—

The Court: Or do you have a copy of the minutes where Ralph White was appointed Chief of Police,

Mr. Lexa: Yes, sir. Here is the telegram by the Village Trustee.

The Court: Very well. Friday morning. That is
563 April 6th.

Are the respondents here?

Mr. Lexa: They are not and have not appeared.

Mr. Bulger: I made arrangements for them to come down this afternoon for the reason that both of these men work in war plants.

The Court: Have them here Friday morning.

Mr. Bulger: Yes, your Honor.

Does your Honor want a draft order on this continuance?

The Court: No.

(Whereupon an adjournment was taken in the above entitled matter until Friday, April 6, 1945.)

564 IN THE CIRCUIT COURT OF COOK COUNTY

• • (Caption—45-C-2198) • •

Kate B. Brown, being first duly sworn, says that she is the reporter who reported in shorthand the proceedings given at the hearing of the above entitled case and that the foregoing is a true and correct transcript of her shorthand notes so taken on April 4, 1945 at 10:30 o'clock A. M.

Kate B. Brown.

Subscribed and sworn to before me this 5th day of April A. D. 1945.

Margaret H. Meek,
*Notary Public.*

(Seal)

BLEED THROUGH

565 IN THE CIRCUIT COURT OF COOK COUNTY

• • (Caption—45-C-2198) • •

Be It Remembered, that the above matter came on for hearing before the Honorable Harry M. Fisher, Judge of said court, upon a motion to dismiss the rule, on Friday, April 6, 1945, at 10:00 o'clock, A. M., and the following proceedings were had:

Appearances:

Messrs. Frank J. Lexa and Irwin A. Lavery appeared for the Plaintiffs, The People's Party;

Mr. Joseph I. Bulger appeared for the Respondents.

566 Mr. Lavery: If your Honor please, there has been a motion filed on behalf of the respondents here to dismiss the rule. I have a motion, or objection to that motion, copy of which has been served on Mr. Bulger, counsel for the respondents, and I am asking leave to have this motion filed so the record will be complete, in that regard.

Now, I want to make a short statement to the Court, and I won't take very long. Your Honor is familiar with the whole background of this situation. One of the things I want specifically to call your Honor's attention to at this time is a paragraph in the resolution of the respondents here, out of this record, in which they separately attempted to overrule your Honor, attempted to overrule Judge Jarecki as chairman of the Board, as to the validity of that electoral board. And in that paragraph they recite that Ralph E. White has not resigned as Village Clerk.

Now, this is incidental to this motion. Here is a copy of the local newspaper—

Mr. Bulger: Published by them.

Mr. Lavery: Yes.

The Court: All I want to know is whether he is the Clerk; as to whether that Board was really legally constituted,

567 or not. The Court found that that Board was not legally constituted, and issued its mandate. There is only one question before me: Whether these people, not having been parties to the lawsuit, are amenable to discipline by this Court. Now, that is purely a question of law.

Mr. Lavery: I think your Honor is right, but may I make another suggestion: There is an overall question here, as your Honor knows, there is an election there a

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week from next Tuesday; the public are interested here as well as these respondents and our clients, as well as the Court.

The Court: Now, you don't need any speech.

Mr. Lavery: I am not making a speech.

The Court: If I have jurisdiction over these people I shall exercise it. It is not a question of sentiment at all; and on the facts the findings were in your favor, they were not parties to the lawsuit.

Mr. Lavery: I won't press that further; but I do want to call this to your attention, and I do this with some reluctance; Mr. Bulger, as your Honor knows, was here from the beginning of this proceeding; he was an observer, in his own words.

Now, I say there is some question, professional question,
as to whether a member of the Board, and therefore
568 an officer of the Court, who is familiar with all of these
processes from the beginning, and who advised his clients to do what they have done, is it discreet and proper that he should now attempt to defend them in this proceeding?

The Court: Do you want me to determine that?

Mr. Lavery: I am just offering that as a suggestion.

The Court: All right.

Mr. Lexa: I just asked for the case, your Honor, of *v. Lodecki*, 238 Ill. App. 92.

Mr. Lavery: If your Honor please, I have another appointment; I am going to go.

Mr. Lexa: This is an appeal from an order entered July 19, 1924, by the Circuit Court of Rock Island County, adjudging them guilty of contempt of court for violating a temporary injunction issued against Lodecki and others.

The Court: Mr. Counsel, the rule on injunctions is quite different; the law is well settled that any one party or no party, who has notice of the issuing of an injunction, can be punished by contempt of court.

Mr. Lexa: I cannot find any rule, your Honor, with reference to mandamus, because the authorities on that question—

The Court: There are rules which hold successors in
office responsible, even though they were not in the
569 first instance parties but are here. Parties who claim
to act, not as successors in office, to the men who were

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required to act, but as independent parties, and they were not made parties to the lawsuit.

Mr. Lexa: That is right.

The Court: Now, if you can find any authority that by knowing what is happening here, they were bound by it without being brought in—

Mr. Lexa: You will find authorities on contempt generally, that any act which is calculated to embarrass or obstruct the dignity of the courts or the administration of justice, constitutes a contempt, and that is in the Court's inherent power to punish defendants in such a matter.

The Court: I would like to hold differently. And I have given the matter some consideration. But in the absence of authorities holding that these men are amenable to the Court's discipline, I am afraid I shall have to hold that they are not; because manifestly the vice of holding them responsible is apparent from the very practice in this case.

When you presented this matter to me first, I suggested that the parties, that the other two members be made parties, and you said you did not want to do it; and I said, "All right, it is your lawsuit, and you may proceed in your own way."

570 Now, the reason you did not want to make them parties then is not really obvious, but you frankly stated it: That had you made them parties they would have appealed. Now, the right to appeal is a substantial right.

Mr. Lexa: So is the right to be on the ballot.

The Court: That is right, that is right. Now, while in this case the equities may all be with you, and I am rather inclined to think that they are, nevertheless, if, consciously the Court could proceed in a mandamus case against one of numerous parties and issue its mandate to him, and then hold the others who are not parties to the lawsuit accountable for the performance of the mandate, there would be a very fine opportunity to deny to those parties due process.

Mr. Lexa: May I answer your Honor by saying this: We are not attempting in this proceedings to hold the respondents subject to the terms and provisions of that mandate at all. That is not the point. We say that, knowing of the mandate, they had a copy in their possession, being informed by Judge Jarecki of what has taken place, that when they requested Judge Jarecki to sit, he said "I won't

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do it." When they requested permission to use his court room, he said, "You cannot use it." But they said, "Very well, we are going ahead without you."

571 I am submitting certain acts by which they flouted the order of this Court dissolving the Board.

The Court: Did they?

Mr. Lexa: I think they did.

The Court: They were not parties to that action.

Mr. Lexa: But they had notice of it, and they knew of it, and they were in court before—that is, they were not in court personally, their attorney was in court; knowing about what had been done it was their duty to intervene and attempt to rephrase or modify the order.

The Court: In other words, this plan of yours to bring about the dissolution of the Board without making a majority of the men who claim to be acting as the Board parties, refusing to make them parties, deliberately to prevent their appealing from any decree that would be entered in this court, that plan of yours would work out so that by simply serving notice upon them that there was such a decree, they would be bound by it.

Mr. Lexa: I don't think so.

The Court: They either were bound by it or they were not. If they were not, then no matter what action they would take may be illegal, may be void, but they are not accountable to this Court for it.

572 Mr. Lexa: Well, I think when they prepared a resolution to overrule what your Honor ruled, that that certainly constitutes contempt.

The Court: They may plan, you know, if they proceed that way, to hold that the election is illegal. It probably will be. Because if it clearly appear that it is fraudulent, that the matter was presented to a court, that they had knowledge of what was happening, that the Board was dissolved—and I think properly dissolved—I think it will go to the validity of that election, if they are brazen enough to keep you people off the ballot. I think they won't be, because their action will talk loudly for their understanding of the essence of democracy. And simply because they have it in their power to print the ballots, the failure to include all parties properly named in it, and so held by a court, would be tantamount in comparison to the conduct of a hold-up man, who, simply because he has a gun in his hand,

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frightens a person into the surrender of his goods; I think the character of the action is quite identical; and if they want to do it, in view of their knowledge of what has happened, and that two judges have held that their conduct was illegal, let them go ahead.

It doesn't seem to me that decent men would do it,
573 but I have no power here to act upon that, because they were not parties to the lawsuit. The action, if they keep these men off the ballot, would become particularly aggravated by reason of the fact that one of the men who purports to act is their candidate.

Mr. Lexa: The man that is acting as Village Clerk at the present time is a candidate for re-election, and in order to attack the Board and overrule it by the facts, they put up the man that resigned from the Village Board for some reason known only to themselves.

The Court: I think it is an aggregated threat upon the public of the privilege of choosing their candidates; but I think that would have to come up in another form.

Mr. Bulger: Shall I draw an order, your Honor, sustaining the motion to dismiss?

The Court: The respondents are discharged.

Mr. Bulger: Thank you.

WHICH were all the proceedings had upon the hearing of the above motion.

574 State of Illinois } ss.
County of Cook }

Tula C. LeWald, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; that she reported in shorthand the proceedings had upon the hearing of the above motion, and transcribed the same, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains all the proceedings had upon said hearing.

Tula C. LeWald

Subscribed and sworn to before me this 12th day of January, A. D. 1948.

Michael T. Organ

(Seal)

575 State of Illinois } ss.
County of Cook }

I, Joseph F. Janda, duly acting and qualified Clerk of the Village of Lyons, keeper of the seal, records, books and

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resolutions of the said Village, do hereby certify that the attached resolution is a true and correct photostatic copy of a resolution passed by the President and Board of Trustees on the 11th day of August, 1942, and that the original of said resolution is on file in the office of the Village Clerk.

Given under my hand and seal this 24th day of January, 1948.

Joseph F. Janda

Subscribed and sworn to before me this..... day of ..... 1948.

.....
*Notary Public.*
(Seal)

576 August 9th, 1942

Hon. T. T. Bulat
President Village of Lyons
Lyons, Illinois

Dear Mr. Bulat,

Please be advised that the Defense Corps, of the Office of Civilian Defense have completed a survey and census of this community and find a total of 5424 persons residing in this Village at this time.

May I suggest that the Board of Trustees pass a Blackout ordinance at an early date, as I am informed the OCD is planning a Test Blackout in the very near future.

Sincerely,
Joseph F. Janda
Training Officer

577 State of Illinois }
County of Cook } ss.

I, Joseph F. Janda, duly acting and qualified Clerk of the Village of Lyons, keeper of the seal, records and books, do hereby certify that the attached is a true and correct photostatic copy of a letter dated August 9, 1942, to the President and Board of Trustees in connection with the survey and census in said Village; that the original of said letter is on file in the office of the Village Clerk.

Given under my hand and seal this 24th day of January, 1948.

Joseph F. Janda

Subscribed and sworn to before me this ..... day of ....., 1948.

.....
*Notary Public.*
(Seal)

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578 RESOLUTION

Whereas, the population of the Village of Lyons has been increasing for the past two years and a census has not been taken for some time; and

Whereas, because of the war the Defense Corps. of the Office of Civilian Defense have completed a survey and Census in co-operation with the Village Officials, and

Whereas, it is shown by a canvass of the registration returns of the various enumerators that the population shows the sum to be a total of 5424 persons residing in this Village at this time,

Now therefore, Be it resolved by the President and Board of Trustees, that the registration and enumeration of persons residing in the Village of Lyons, by the Defense Corps of the Office of Civilian Defense, Illinois, which census has been taken under the auspices and in co-operation with the Village Officials, showing the population to be a total of 5424 persons, and the same is hereby adopted as the official Village Census of the Village of Lyons, Illinois.

That copies be filed with the Secretary of State and the U. S. Dept. of Commerce.

Passed and adopted this 11th day of August, 1942.

Approved, T. T. Bulat, President.

Attest, Ralph E. White, Village Clerk.

579 State of Illinois } ss.
County of Cook }

I, Joseph F. Janda, duly acting and qualified Clerk of the Village of Lyons, keeper of the seal, records, books and ordinances of the said Village do hereby certify that the attached ordinance is a true and correct copy of an ordinance passed by the President and Board of Trustees on the 11th day of August, 1942, and that the original of said ordinance is on file in the office of the Village Clerk.

Given under my hand and seal this 24th day of January, 1948.

Joseph F. Janda

Subscribed and sworn to before me this ..... day of ....., 1948.

.....

*Notary Public.*

(Seal)

580 AN ORDINANCE

Authorizing Blackouts and Air Raid Protection Orders, Rules and Regulation in the Village of Lyons and Prescribing Penalties for Violation Thereof.

Whereas, a state of war exists between the United States of America and Japan, Germany, and Italy, and the defense of the United States of America is in the hands of the Army and Navy; and

Whereas, in modern warfare no city, however distant from the enemy, is free from attack; and

Whereas, lights at night time are a definite aid to the enemy in reaching military other objectives; and

Whereas, blackouts, when ordered by the Army or Navy are essential to the preservation of life and property in this village, and it is imperative that the Village of Lyons aid the Army and Navy by all possible cooperation and assistance; and

Whereas, failure to extinguish lights when ordered to do so by duly authorized authorities may result in loss of life by thousands of the residents of the Village of Lyons as well as the residents of other parts of the Nation when lights in this village are used as a guide to other objectives; and

Whereas, failure to comply with orders, rules and regulations governing evacuations, traffic movements, congregation of persons in streets and other public places will result in confusion and unnecessary loss of life both during blackouts and during air raids in the daytime;

NOW, therefore, be it ordained by the President and Board of Trustees of the Village of Lyons:

Section 1: Authority to Promulgate Necessary Orders, Rules and Regulation for Blackouts and Air Raids. In order to protect life and property in the Village of Lyons from enemy action, the Chairman of the Civilian Defense of the Village of Lyons is authorized and directed to carry out blackouts and air raid protection measures in said village at such times and for such periods as are authorized or ordered by the Army or Navy or whenever, in the opinion of the said Chairman, it may be necessary, and to promulgate such orders, rules, and regulations as may

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be necessary to insure the success of the blackouts and air raid protection measures and to protect life and property during said periods. Said orders, rules and regulations may include traffic movements of emergency or other vehicles, evacuation of residents, congregation of persons on public streets, sidewalks, and in public places or buildings, but this enumeration shall not be taken as a limitation on the power to promulgate orders, rules, and regulations governing any other subject, persons or property which must be regulated in order to insure the proper carrying out of any duly authorized blackout or air raid protection measure.

581 Section 2: The said Chairman may also order practice blackouts and air raid drills whenever requested by the military or naval forces of the United States or whenever in his opinion it may be necessary for the preparation of the citizens for emergency. During such practice blackouts or air raid drills the orders, rules and regulations pertaining to blackouts or air raids herein authorized shall be applicable and in force.

Section 3: General Orders, Rules and Regulations to Be in Writing. All orders, rules and regulations authorized by this ordinance for the conduct of the general public shall be in writing and shall be available for public inspection at the place and during the hours fixed by the said Chairman.

Section 4: Orders, Rules and Regulations Effective Until Repealed by the Village Board. Any order, rule or regulation promulgated pursuant to the authority conferred by this ordinance shall be in force and effect from the time of promulgation until amended or repealed by the Village President and Board of Trustees.

Section 5: Appointment of Special Police—Identifying Emblem. The Village President may appoint for a specified time as many special police, without pay, from among residents of the Village of Lyons as may be deemed advisable for service in connection with any blackout or air raid protection measure. During the term of service of such special police, they shall possess all the powers and privileges and perform all the duties of patrolmen in the police force of the Village of Lyons. Said special police must wear such identifying emblem as may be prescribed by the said Chairman and it shall be unlawful for any said special policeman to attempt to carry out any order, rule, or regulation pro-

mulgated under the authority conferred by this ordinance when he is not wearing said identifying emblem.

Section 6: Unauthorized Warning or All-Clear Signals Prohibited. Any unauthorized person who shall operate a siren or other device so as to stimulate a blackout signal or air raid, or the termination of a blackout or air raid, shall be deemed guilty of a violation of this ordinance and shall be subject to the penalties imposed by Section 11 of this ordinance.

Section 7: No Municipal or Private Liability. This ordinance is an exercise by the Village of its governmental functions for the protection of the public peace, health and safety and neither the Village of Lyons, its officers, employees, agents or representatives nor any individual, receiver, firm, partnership, corporation, association, or trustee, or any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule, or regulation promulgated pursuant to the provisions of this ordinance shall be liable for any damage sustained to persons or property as the result of said activity.

582 Section 8: Lights During Blackout Declared Public Nuisance. Any light displayed contrary to any order, rule or regulation promulgated pursuant to the provisions of this ordinance shall constitute a public nuisance and when deemed necessary in order to protect life or property during a blackout or air raid the police, or the special police authorized herein, are authorized and directed to enter upon any premises within the Village of Lyons using reasonable force, and extinguish lights or take other reasonably necessary action to make effective any order, rule or regulation promulgated under the authority conferred by this ordinance.

Section 9: Conflicting Ordinances, Orders, Rules and Regulations Suspended. At all times when the orders, rules and regulations made and promulgated pursuant to this ordinance shall be in effect, they shall supersede all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

Section 10: No Conflict with State, or Federal Statutes. This ordinance shall not be construed so as to conflict with any State or Federal statute or with any military or naval order, rule or regulation.

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Section 11: In the absence, inability or incapacity of the said Chairman of Civilian Defense of the Village of Lyons, the Coordinator of said village shall have all the powers and duties authorized by this ordinance.

Section 12: Penalties for Violations. Any persons, firm or corporation violating any of the provisions of this ordinance or any order, rule of regulation issued pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding Two Hundred ($200.00) Dollars.

Section 13: Separability of Provisions. It is the intention of the Village President and Board of Trustees that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the Village President and Board of Trustees that if any provision of this ordinance be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

Section 14. This ordinance shall be in full force and effect from and after its passage and approval according to law.

PASSED this 11 day of August 1942, A. D.

Approved this 11 day of August 1942, A. D.

.....

*President of Board of Trustees.*

ATTEST:

.....

*Village Clerk.*

583 And afterwards, to wit, on the 9th day of April, 1948, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

584 In the District Court of the United States

* * (Caption—No. 47-C-1832) * *

On agreement of the parties by counsel now made in open Court it is

ORDERED that this cause be and it is hereby continued to April 15, 1948, for disposition.

585 And afterwards on, to wit, the 15th day of April, 1948, there was filed in the Clerk's office of said Court a certain Opinion by Michael L. Igoe, District Judge, in words and figures following, to wit:

586 UNITED STATES DISTRICT COURT

* * (Caption—No. 47-C-1832) * *

Opinion by Michael L. Igoe, District Judge,

The relator, White, petitions for the Writ of Habeas Corpus to relieve him from imprisonment by the Sheriff of Cook County, Illinois, under authority of a mittimus issued by the Superior Court of Cook County, Illinois. Upon a preliminary hearing, the writ was issued and the relator admitted to bail. The Sheriff filed his return, the matter was tried, and held under advisement pending written arguments and consideration. A statement of facts and conclusions of law have been filed herein.

The relator, White, was elected to the office of Village Clerk of the Village of Lyons in Cook County, Illinois,
587 in 1941, and during the period here involved was the duly elected, qualified, acting, and de jure clerk of said village. As such clerk, he received and filed a nominating certificate of the Regular Peoples Party, with other papers, nominating a list of candidates for village offices for the Annual Village election to be held in said Village on April 17, 1945. This group of candidates was nominated by a party caucus and the certificate to said nomination shows that the said party was an organized and legally existing party in said village. To such nominating papers, two electors filed objections setting out that said party could not legally nominate candidates for said election because, as is alleged, the said village had a population of over 5,000, which fact, under the statute, precluded nomination by an existing political party of its candidates by caucus.

The Election Code of Illinois provides for and creates a municipal officers Electoral Board to be composed of the Village President, as chairman, the Village Clerk, and the Senior Village Trustee, and vests such Board with exclusive jurisdiction to hear and expeditiously adjudi-
588 cate upon objections to nominating papers. Such Board has power to administer oaths, and summon and examine witnesses; issue subpoena duces tecum for records and books as in equity cases; adopt its own rules of procedure, on the first day of its sitting, for evidence, arguments, and in its discretion, written briefs. The Act provides that:

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"The electoral board shall * * * decide whether or not the certificate of nomination or nomination papers on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final."

And the act says that the electoral board shall report its decision within twenty-four (24) hours to the Village Clerk who

"shall abide by and comply with the ruling so made to all intents and purposes." (Ch. 46, Sec. 10-10, Ill. Rev. Stat.)

Thus it appears from the statute that it was legislative intention to create a special forum or political court with finality of judgment and exclusive jurisdiction to promptly function within the limited time fixed for the arrangements for elections, where the ordinary and slower processes of courts would not be adaptable. Obviously the courts 589 of Illinois are excluded from assuming jurisdiction over objections to the nominating papers of candidates, or to review the actions of such a board, or to ignore its decisions. It is clear that when acting within the sphere and scope of its jurisdiction, the authority of an Electoral Board is supreme, exclusive and final.

In a case involving objections to nominating papers, the Supreme Court of Illinois, in an original mandamus case, filed in that court, said of such a statutory body:

"The legislature, by the act named, has created a special forum or court to which such matters are referable, and that body has seen fit to declare by statute that the decision of the body there provided for shall in such matters be final. * * * It is purely a statutory proceeding relative to a purely political question, with which this court interferes on very rare occasions, * * *; the judgment of the proper tribunal has been invoked and has been received, and although it may be contrary to the law, as contended by the relators, that does not at all interfere with the jurisdiction of the body that tried it, and does not authorize us in a proceeding for mandamus, to review the action of such tribunal, nor will that authorize us to ignore that action and take it as a matter of original jurisdiction here, and notwithstanding the provisions of the statute mak-

ing the decision of such tribunal final, determine for ourselves who is entitled to the nomination" (p. 251).
590 People ex rel Murray *vs.* Rose,
211 Ill. 249, 251.

In this case, the President of the Village was a candidate for re-election and under the statute his duties as chairman of the Electoral Board devolved upon the County Judge of Cook County who was then the Hon. Edmund K. Jarecki. As soon as he received said Objections, the relator, White, as Village Clerk, forwarded the nominating papers of the Regular Peoples Party, and the said objections to Judge Jarecki with the names and addresses of the interested persons, and requested him to take jurisdiction, and call and conduct the hearing upon said objections. Judge Jarecki then called a meeting of the Electoral Board for March 23, 1945, in his court room, and gave notice to the persons interested.

The Board was convened and took jurisdiction of the said objections to the nominating papers of the Regular Peoples Party. The Board considered the question of population of the Village of Lyons. The contest was between the Federal 1940 census of the Village and the latest Village census taken in 1942.

It was proven on the hearing hereof in this court that in cooperation with the office of Civilian Defense, the Village of Lyons caused a village census to be taken of the popu-
lation of the Village in 1942, and that such census
591 showed the population to be 5424; and it was further shown that by Resolution of the Board of Trustees of said Village, adopted August 11, 1942, the enumeration of the population of said Village so taken was adopted as the official Village census of the Village of Lyons.

The existence of such census was shown to have been known to both White and Hoffman, and they had knowledge of the taking of such census.

The Federal Census of 1940 showed the population of the Village of Lyons to be 4960, and the Village census taken in 1942 showed the population to be 5424. The Illinois statute was read to the Board, which provides that:

> "That several courts in this state shall take judicial notice of the population of any municipality, as the population appears from the latest Federal, State or Municipal census so taken." (Ill. Rev. Stat. Ch. 24, Sec. 1-9).

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Judge Jarecki took the position that the Federal Census governed. White said "State or municipality, that is the way I heard it." Judge Jarecki put the question as to the finding of the Board and voted to overrule the objections;
White and Hoffman voted to sustain. Judge Jarecki
592 ruled: "Let it be so recorded. You have the record to that effect."

Judge Jarecki then ordered the decision held up pending a hearing in a mandamus proceeding filed by the candidates in the Circuit Court of Cook County, which had been filed on March 22, 1945, and which was returnable and set for hearing at 10:00 A. M. on March 27, 1945. The matter of making and filing the report of said Electoral Board was then deferred, and that matter set over until noon of March 27, 1945.

The said mandamus proceeding filed by the said candidates was against Judge Jarecki only, and asked the dissolution of the Board. On the morning of March 26, 1947, an assistant States Attorney of Cook County, claiming to represent Judge Jarecki in that behalf, together with counsel for said candidates, appeared before the Circuit Court, Judge Harry Fisher presiding, and there the candidates filed an amendment to their complaint alleging that Ralph E. White was not the Village Clerk of the Village of Lyons, and that one Joseph Janda was such clerk. Judge Jarecki, through his counsel, demurred ore tenus to the amended complaint. The demurrer was overruled and
593 the complaint taken as confessed. Without either White, Hoffman, or Janda being made a party to the suit, a mandamus order was entered by confession of Judge Jarecki only, finding that White "was not in truth and fact the Clerk of the Village of Lyons at the time of the convening and hearing of said Electoral Board, and had no power or authority to act as a member of said Electoral Board" and that therefore the Board was illegally constituted.

Before entering judgment in said cause, there was an interchange of ideas between Judges Jarecki and Fisher, through counsel for the candidates as a go-between, and Judge Jarecki (assuming mistakenly that White was not Village Clerk), sent word to Judge Fisher that he thought the Electoral Board was illegally made up, and that he would obey any order that Judge Fisher would pronounce.

Thereupon, Judge Fisher entered his mandamus judgment and ordered Judge Jarecki to dissolve the Electoral Board, and forthwith return all papers to the Village authorities. Judge Jarecki immediately complied by writing to White as Village Clerk, enclosing the papers, stating that Judge Fisher had that day (March 26) issued a mandamus writ directing him to return all papers "on the
594 ground that the Electoral Board was illegally constituted;" and said further that the said "mandamus action automatically ends the action of the Election Board."

On the following day, March 27, at noon, the interested parties met in Judge Jarecki's chambers pursuant to adjournment and there Judge Jarecki said that he had sent the papers back to White and showed a copy of Judge Fisher's order as his authority to do so; took the position that there was no Board, nothing to do; and when the other two members of the Electoral Board wanted to proceed and close up the business of the Board in the court room where they had convened originally, Judge Jarecki denied the use of his court room and personally refused to take further part in any proceedings, saying, "I have terminated my relationship with the Board." The candidates and their attorneys who were present also refused to further participate and remained with Judge Jarecki in his chambers. The two members, White and Hoffman, thus deserted by Judge Jarecki then went to the County Clerk's office and closed up the proceedings of the Board, passed, and directed the filing of a resolution confirming its action, and adjourned sine die. The report of the Board was
595 filed in the Village Clerk's office, and the several candidates affected were notified.

The candidates then moved Judge Fisher of the Circuit Court to adjudge White and Hoffman in contempt for completing and filing the proceedings of the Electoral Board. Judge Fisher held that he had no jurisdiction to do so for the reason they had not been made parties to the mandamus proceeding, and reminded counsel for the candidates that he had so told him when he applied for the judgment. In discharging the rule, Judge Fisher said:

> "When you presented this matter to me first, I suggested that the other two members, (White and Hoffman) be made parties, and you said you did not want

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to do it; and I said 'all right, it is your law suit, and you may proceed in your own way.' Now the reason you did not want to make them parties then is not really obvious, but you frankly stated it: That had you made them parties, they would have appealed. Now the right to appeal is a substantial right." (Relators Ex 7 p. 5-6).

Judge Fisher then proceeded to comment further on the omission of White and Hoffman as parties and said:

"If, *consciously,* the court could proceed in a mandamus case against one of numerous parties and issue its mandate to him, and then hold the others, who are not parties to the law suit, accountable for the per-
596 formance of the mandate, there would be a very fine opportunity to deny to those parties due process of law." (See Relators Exhibit 7).

However, the day before Judge Fisher discharged the contempt rule, the candidates moved over to the Superior Court of Cook County and filed their complaint in mandamus against White and one Joseph F. Janda for a mandamus writ to compel the ticket to be placed on the ballot for said election without regard to the decision on said contempt rule, and in disregard of the proceedings of said Electoral Board sustaining said objections. The candidates based the Superior Court mandamus directly and squarely upon the void judgment of the Circuit Court.

In the Superior Court complaint, the candidates did not disclose to the court that the Electoral Board had sustained the objections to the said nomination certificate and had filed a report thereof with the Village Clerk. A motion to strike the complaint was denied, and the defendants answered setting out a complete history of the Electoral Board proceedings including the vote taken upon the motion to sustain the objections, the proceedings showing Judge Jarecki refusing to conclude the hearing and
597 report the decision, the resolution closing the proceedings and directing a report thereof to be filed with the Village Clerk.

The defendants claimed that the Circuit Court proceeding was void for want of proper parties; that the Electoral Board proceedings were valid, res adjudicata, legal and final, and that no duty rested upon the Electoral Board or White as Village Clerk, to obey or respect the Circuit

Court judgment; that the Superior Court had no jurisdiction to review, consider, overrule, or ignore the proceedings of the Electoral Board, which was a statutory body created to consider objections to nominating papers, and was of equal dignity with the courts in the exercise of its functions.

The candidates made no reply to White's answer, but moved for judgment upon the record. There was no trial of issues and the judgment of the Superior Court was upon the pleadings, while the judgment order recites that evidence was heard, the report of proceedings shows that none was heard.

The judgment directed White to put the ticket on the ballot, and to destroy the ones already prepared for the election. The order was entered on Friday. The elec-
598 tion was set for the following Tuesday.

White did not comply with the mandamus judgment, and was ruled to show cause why he should not be held in contempt of court for his failure to do so.

White answered the rule and set up that the court was without jurisdiction to ignore or review the Electoral Board proceedings, and that the jurisdiction of the court did not extend to compel a municipal officer to violate his oath or do an illegal act; nor to create new duties, nor enforce illegal acts, but could only enforce the performance of legal duties where such performance was being refused.

White further answering the rule, alleged that when the said Lyons Municipal Electoral Board filed its ruling and decision upon said objections to the said "Regular Peoples Party" certificate of nominations or nomination papers with the Village Clerk, it became his duty to prepare the official ballots for said election in accordance with the tickets legally filed, and furnish them for the judges of election of said Village pursuant to the statute, and that such duty was imposed upon him by statute.
599 White further answered the rule and alleged that the court was advised by the pleadings on file, which facts stood admitted, that the objections to the said certificates of nomination or nomination papers of the "Regular Peoples Party" had been sustained by the final action of the said Lyons municipal Electoral Board and that pursuant to the decision of said Electoral Board no such "Regular Peoples Party" existed for purposes of said election.

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White further alleged in answer to the rule that no legal duty rested upon him as Village Clerk to print a ballot for said election with the names of the candidates of the said "Regular Peoples Party" ticket and that the court had no jurisdiction to enter any mandamus order whereby to require him to violate the election laws in such case made and provided and to do an act in violation of law.

White further answering the rule said:

> "That in entering said mandamus order the court invaded the jurisdiction of the executive department and the order directing him to destroy ballots already printed and to print new ballots with "Regular Peoples Party" ticket thereon is void, and of no force or effect.

Notwithstanding the answer to the rule the Superior
600 Court, without evidence, adjudged White to be in contempt for failure to comply with the mandamus judgment, and sentenced him to six months imprisonment in the County Jail of Cook County.

In an effort to relieve himself of said sentence, White prosecuted appeals to the Appellate Court of Illinois where the two judgments were affirmed. The Supreme Court of Illinois and the Supreme Court of the United States each refused to review said judgments, and the Supreme Court of Illinois thereafter refused to consider an application to it for the Writ of Habeas Corpus.

If the Municipal Electoral Board had jurisdiction to hear the objections to said ticket, then neither the Circuit Court nor the Superior Court had any jurisdiction in the premises, for under the Supreme Court decision in People Ex rel Murray vs. Rose, 211 Ill. 249, 251, above quoted from, an Electoral Board is a political court of exclusive and final jurisdiction. A study of the Illinois law clearly indicates that the decision of the Supreme Court is cor-
601 rect.

This record clearly shows that the said Electoral Board had jurisdiction over the said Regular Peoples Party ticket, and the objections thereto, that it was duly and legally organized, and had power to decide the issue of population and did decide it by majority vote; and, under the Election Code of Illinois, the jurisdiction of said Electoral Board was exclusive and final. The record further shows that the Circuit Court obtained no jurisdiction over said Electoral Board and that its order upon

Judge Jarecki to dissolve the Board was wholly void and was later so recognized by the Judge that entered it, when he was asked to enforce it by contempt.

It is also clear that the mandamus judgment of the Superior Court was based squarely upon the void judgment of the Circuit Court and the judgment of the Superior Court was equally void.

The statute creating the said Electoral Board gives it exclusive jurisdiction over objections to nominating papers and thereby withdraws jurisdiction from the Circuit and Superior Courts of Cook County. The Circuit Court had no jurisdiction to dissolve the three-man board, working by majority, by obtaining jurisdiction over one only, and the two members, White and Hoffman, who were not
602 parties thereto, had the legal right when Judge Jarecki refused to sit with them, to proceed to close up the business of the Board and record the vote already taken. The filing of that decision with the Village Clerk was a complete justification for the action of the Clerk in refusing to put the said ticket on the ballot. It was not contempt of court to refuse obedience to a void judgment.

It is the law that mandamus does not lie to create a new duty, or to compel an officer to violate his known duty, and a court has no power to punish for contempt of its unlawful requirement. See Ex parte Rowland, 104 U. S. 604, where it is so decided. The court there said further in that Habeas Corpus case:

> "It is also settled that more cannot be required of a public officer by mandamus than the law had made it his duty to do. The object of the writ is to enforce the performance of an existing duty, not to create a new one."

The Superior Court was without jurisdiction in mandamus to go thus beyond the scope of the remedy and order an officer to disobey the provisions of the Election Code.

The Superior Court had no jurisdiction to enter the
603 political field and undo the acts of a purely political court, and had no authority in law to ignore the action of the Electoral Board and brush its decisions aside in a collateral proceeding. The Superior Court might compel an Electoral Board to function, if it should refuse so to do, but it had no power to tell it how to decide, or to ignore its decisions when made.

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The Appellate Court of Illinois refused to decide the question raised by White on appeal that the act of the Superior Court was an invasion of another department of government and that the conviction was without due process of law. That court took the position that such question was a constitutional one of which the Supreme Court of Illinois had exclusive jurisdiction, and that for a decision upon that question, the appeal should have been to the Supreme Court, hence waived. It has been held that a question of lack of due process of law for violation of some constitutional provision is not a constitutional question within the meaning of the provisions of the Civil Practice Act of Illinois regulating appeals. (Cooper v. Palais Royal Theatre Co., 328 Ill. 44, 49; Baumgartner v. Boyer, 384 Ill. 584, 588; Mandrake v. Schlaeger, 393 Ill. 610).
604 The refusal to consider the due process question raised was in itself a denial of due process of law. (See Cole v. State of Arkansas, vol. 92-No. 11, 1947 Term Advance Opinions U. S. Supreme Court).

But it is clear that if the Superior Court had no jurisdiction, then the Appellate Court had none. It was the same case removed by appeal. But the opinion of the Appellate Court is, like that of the Superior Court based upon the supposition, erroneous as we now know, that White was not Village Clerk; and upon the assumption of fraud, of which there is no mention, or proof, or allegation in the record. Fraud cannot be presumed where public officials are carrying out the function of government.

That White is illegally imprisoned is obvious. The whole record was built upon the theory that White was not Village Clerk and therefore the Electoral Board was illegally constituted,—when in fact White was Clerk, and the Electoral Board was legally constituted, and had acted within its jurisdiction. That Board had the right to err within its jurisdiction the same as any court. Whether it erred or not is immaterial here. It functioned within its statutory jurisdiction and its decision is binding everywhere.
605 The conclusion of the court is that the relator is imprisoned without due process of law, and that he has exhausted his remedies to be relieved of such imprisonment.

The remaining term of imprisonment yet to be served is short, and to require the relator now to prosecute a

further series of litigations, as suggested by the respondent Sheriff, where the Supreme Court of the State has both refused to review the record and denied relator the right to be heard on Habeas Corpus, would be in itself a denial of due process of law. The law requires no such circuitous proceedings. It is obvious that the State of Illinois has no intention of releasing White notwithstanding the illegality of his imprisonment.

The relator is discharged and the Clerk will enter the necessary orders.

606 And on the same day to wit, on the 15th day of April, 1948, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

607 UNITED STATES DISTRICT OF ILLINOIS

* * (Caption—47-C-1832) * *

## FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE COURT

At the conclusion of the trial of said cause, the oral arguments of counsel and consideration of their respective written briefs and arguments, the court makes the following findings of facts and conclusions of law:

1. The facts giving rise to the legal questions here to be adjudicated are now undisputed and may be summarized as follows:

608 2. The Village of Lyons is a Municipal Corporation under Illinois law and the relator White was elected, qualified, and served as its Village Clerk for the four year period from the Annual Election of 1941 to the annual election held on April 17, 1945.

3. For the Annual Election of 1945, two tickets were filed with relator as the Village Clerk, one of which was the Regular Peoples Party ticket, which was filed on March 13, 1945. Its nomination papers disclosed that it was then an existing political party and that it had nominated its group of candidates by a party caucus.

4. On March 17, 1945, two voters, or electors, of the Village filed with the Clerk objections to the said Regular Peoples Party ticket on the ground that the population

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of the Village was *over* 5,000, and that under the election laws, said party, being a regular political party in the Village, could not, under the election laws of the State, nominate its candidates by a caucus.

5. The Illinois Statute provides (ch. 46 Sec. 10-1) that where Village population is *under* 5,000, candidates of a regular political party may caucus and nominate its candidates.

609 6. The statute of Illinois creates a municipal electoral board to hear objections to tickets, consisting of the Village President as Chairman, the Village Clerk, and the Senior Village Trustee, with a provision that if the President, be a candidate to succeed himself, his place as Chairman of the board should be filled by the County Judge of the County who would then be chairman, and for a further vacancy the senior judge of the Circuit Court is next in line of succession.

7. An Electoral Board is, in Illinois, considered to be a special forum or court with exclusive jurisdiction and finality of decision upon objections to nominating petitions of candidates. It operates expeditiously and is required to report its decision to the proper official in twenty-four (24) hours after a hearing.

8. The President of the Village was, in this instance, a candidate for re-election and the relator as Clerk of the Village sent the said ticket and objections thereto to County Judge of Cook County, Edmund K. Jarecki, with all necessary information, and requested Judge Jarecki, as such Chairman, to call the board together to consider and pass upon the objections, and to notify all concerned.

610 9. Accordingly, Judge Jarecki called a meeting of the Electoral Board for March 23, 1945, and gave notice to all candidates and persons interested, of the meeting of the Municipal Electoral Board to be held in his court room at 10 o'clock A. M. on said day, to consider and pass upon said objections. All interested parties appeared except the attorney for the objectors and for the Village of Lyons.

10. By some information given out to the attorney for the objectors, and to the Village attorney of the Village of Lyons, by Judge Jarecki's Clerk, they were erroneously advised that the Judge would be busy with his judicial duties at 10 o'clock A. M., and would not take up the Vil-

lage Electoral Board matters until 10:30 o'clock. As a result of such erroneous advice, neither attorney was present at the hearing on the objections, and Judge Jarecki would not await their arrival.

11. The Lyons Electoral Board matter was taken up by Judge Jarecki shortly after 10:00 o'clock, and the proceedings were had on that morning without the presence of either the attorneys for objectors or the Village attorney. The parties present are shown by a transcript of the proceedings to have been Hon. Edmund K. Jarecki, Chairman; Mr. Ralph E. White and Mr. Louis Hoffman, members;
Mr. John Daly, Ass't. Attorney for the Election Com-
611 missioners office and Mr. Urban A. Lavery and Mr. Frank J. Lexa, representing the Regular Peoples Party candidates.

12. The only question raised and considered before the Electoral Board was the population of the Village of Lyons.

13. Judge Jarecki stated that the Federal Census of 1940 would govern and was decisive of the question of Village population. The relator, White, stated that the way he read the Illinois law it was the state or municipality census that governed.

14. The Illinois Statute (ch. 24 Sec. 1-9) provides that:

> Whenever in this Act any provision thereof is based upon the number of inhabitants, the number of inhabitants of the municipality shall be determined by the *latest* census taken by authority of the United States or this State or that municipality, • • • and the several courts in this State shall take judicial cognizance of the population of any municipality, as the population appears from the latest Federal, state, or Municipal census so taken.

14½. In 1942, a census was taken of the inhabitants of the Village of Lyons and was established by action of the Village Board of Trustees of the Village of Lyons on August 11, 1942; and evidence concerning Village popu-
lation was before the Electoral Board.

612 15. Both White, and the other Election Board member, Louis Hoffman, had knowledge of the Village census, and the Electoral Board proceedings show that they had advised Judge Jarecki of the proof showing a Village population higher and later than the Federal census.

16. With those matters before the Electoral Board,

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Judge Jarecki called for a vote upon the objections and announced his vote against the objections; White and Hoffman voted to sustain the objections and Judge Jarecki ruled: "Let it be so recorded. You have the record to that effect." (Abst 67).

17. The vote was thus decided upon the judicial cognizance taken of census records. Judge Jarecki, accepting the Federal census of the Village as a finality and White and Hoffman accepting the later Village census as controlling.

18. The statute requires the chairman to promptly report the decision of the Board to the Village Clerk who shall abide by and comply with the ruling so made to all intents and purposes. (Ill. Rev. Stat. ch. 46 Sec. 10-10).

19. After the decision was announced, the Attorney for the candidates on the Regular Peoples Party ticket asked Judge Jarecki to "suspend the issuing of the order
613 here for a few days to give us an opportunity to try out this question." Judge Jarecki stated: "I will hold it (the report) until Tuesday noon," March 27, 1945.

20. Judge Jarecki then held up the matter of making the report of the decision of the Board until March 27.

21. During the meeting of March 23, 1945, the attorney for the candidates raised a question of the qualifications of the relator, Ralph E. White, to be a member of the Board as Village Clerk of the Village of Lyons, stating that White had resigned as Clerk and had been sworn in as Chief of Police of the Village, and, that alleged fact was so stated as the basis for his request to hold up filing the report of the decision of the Board on the objections.

## THE FIRST MANDAMUS PETITION IN THE CIRCUIT COURT

22. On March 22, 1945, the day *prior* to the proceedings had by the Municipal Electoral Board in Judge Jarecki's court room, the candidates on the Regular Peoples Party ticket, had filed a mandamus proceeding in the Circuit Court of Cook County, making only Judge Jarecki a party, contending as a First ground for Mandamus, that
614 "The objections to their nominating papers was based solely on legal and justiciable grounds and not on a factual ground • • • and • • • it is only matters

of fact and not questions of law that can be heard and determined by any of the electoral board."

23. As a second ground for Mandamus, it was contended that there was a failure to properly notify the relators of the objections. However, the proceedings show the parties appeared and took part in the proceedings thereafter without reliance on their second ground. Their appearance throughout has been general, not special.

24. On the hearing before the Municipal Electoral Board on March 23rd, Attorney Lavery stated that the relator, White, had resigned as Village Clerk and had been sworn in and was acting as Chief of Police of the Village of Lyons; Judge Jarecki ruled that that point could not be considered by the Board.

24½. Between March 23 and 27, Lavery as attorney for the candidates, was active in amending the mandamus petition pending before Judge Fisher. On March 26, he presented to Judge Fisher his amendment to the mandamus petition alleging therein that Ralph E. White was not the Village Clerk of the Village of Lyons, but that one
615 Joseph Janda was said Clerk.

## THE AMENDMENT TO CIRCUIT COURT MANDAMUS PETITION

25. The return day of the mandamus summons against Judge Jarecki in the Circuit Court was returnable on March 27, 1945. On March 26, 1945, the States Attorney of Cook County, representing Judge Jarecki appeared before Judge Fisher, to whom the case stood assigned, together with Mr. Lavery representing the relator plaintiffs, and Mr. Lavery filed an amendment to his complaint charging that Ralph E. White was no longer Village Clerk of the Village of Lyons, and that one Joseph Janda was such Clerk and had been for a year and a half; and that White took all steps to cause Judge Jarecki to call and organize the Municipal Electoral Board and to proceed to a hearing of the objections; that White assumed to be Village Clerk and functioned as such in the matter of said objections; that the candidates challenged his right to act as a member of the Board and alleged as a consequence that Judge Jarecki as chairman was "without authority or jurisdiction in the premises whatsoever." Neither White nor Hoffman were made parties to the suit challenging White's title and the jurisdiction of the Board.

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616 26. The States Attorney representing Judge Jarecki appeared to the complaint as amended and demurred ore tenus instanter and when his demurrer was overruled, stood by the demurrer.

27. The Circuit Court then entered its judgment, taking the complaint as confessed, and, on the allegations in the amended complaint so confessed ordered Judge Jarecki to dissolve the Electoral Board and forthwith to return all papers to the Village authorities. The court made a specific finding in the mandamus judgment that White "was not in truth and fact the Clerk of the Village of Lyons at the time of the convening and hearing of said Electoral Board, and therefore had no power or authority to act as a member of said Electoral Board," and therefore the Board was illegally constituted.

28. Before Judge Fisher entered his mandamus judgment, he and Judge Jarecki conferred or exchanged opinions through the medium of Mr. Lavery as a go-between messenger, the conclusion of which was that Judge Jarecki sent word to Judge Fisher that he thought the Board was illegally made up because (as he then assumed) White was not the Village Clerk and stated that he, Jarecki, was ready to obey any judgment the Circuit Court would pro-
617 nounce. That brought the Attorneys and Judges into accord and Judge Fisher entered his mandamus judgment. Judge Jarecki immediately obeyed the order, and in his letter to "Hon. Ralph E. White, Village Clerk, Lyons, Illinois" stated that:

> "Circuit Court Judge Harry Fisher today issued a Writ of Mandamus directing me to return all papers in the above entitled matter to you on the ground that the Electoral Board was illegally constituted."

In the letter, it was further stated that the said

> "Mandamus action automatically ends the action of the Election Board. (Abst 15)

29. Judge Jarecki did not enter any order to dissolve the Electoral Board. He said to Mr. White that the Board was dissolved by the mandamus judgment "automatically," and, "ends the action of the Election Board."

30. On the following day, March 27, at noon, the interested partes met in Judge Jarecki's chambers pursuant to adjournment and there Judge Jarecki said he had sent the papers back to White and showed a copy of Judge

Fisher's order as his authority so to do; took the position that there was no board, nothing to do, and when the other two members wanted to proceed and close up the
618 business of the Board in the court room where they had convened originally, Judge Jarecki denied the use of his court room and personally refused to take further part in any proceedings, saying "I have terminated my relationship with the Board."

31. The candidates and their attorneys who were present also refused to further participate and remained with Judge Jarecki.

32. The two members, thus deserted by Judge Jarecki, and the candidates, then went to the County Clerk's office and closed up the proceedings of the Board, recorded the vote, directed the filing of the resolution confirming it, and adjourned sine die. The report of the Board was filed and the several candidates affected were notified.

## CONTEMPT RULE ON WHITE AND HOFFMAN TO SHOW CAUSE IN CIRCUIT COURT

33. A petition for a rule to show cause was then filed before Judge Fisher of the Circuit Court on April 2, 1945, to require White and Hoffman to show cause why they should not be held in contempt of the Circuit Court for making and filing a report of the proceedings of the Electoral Board, and such a rule was entered, returnable March 6, 1945, and was answered by White and Hoffman.
619 Judge Fisher, upon hearing of the rule, reminded counsel for the candidates that he, Judge Fisher, had told Lavery, attorney for the candidates, when they took their judgment that they should have made all board members parties and stated that he had no jurisdiction over White and Hoffman, and discharged the rule.

34. The petition for a rule to show cause sets up the acts of White and Hoffman had subsequent to the entry of the mandamus judgment against Judge Jarecki, and prays for a mandamus order to compel petitioners names to be printed on the ballots *or in the alternative* an order of commitment for contempt. It says:

> "That each, all and every of the illegal and unlawful purported acts by said respondents as members of said purported Lyons Municipal Officers Electoral Board be ordered rescinded, set aside and declared

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null and void * * *, and that the names of your petitioners be printed upon the ballots as the candidates of the Regular Peoples Party of the Village of Lyons, Cook County, Illinois on the 17th day of April 1945; or, in the alternative, that the respondents be ruled in the willful contempt of this court and committed to the County Jail of Cook County, Illinois, for such contempt and that such other further orders in the premises may be entered as the court may deem necessary and proper."

620 35. In the contempt proceedings before Judge Fisher, the effort was to have the court punish White and Hoffman because they knew of the mandamus judgment and yet proceeded with the business of the Electoral Board without cooperation from Judge Jarecki. Judge Fisher stated that he would like to hold White and Hoffman subject to discipline but would have to hold differently; that the vice of holding White and Hoffman in contempt was the manner in which the suit was engineered by counsel for the candidates and said to counsel who was pressing the contempt charges:

"When you presented this matter to me first, I suggested that the other two members, (White and Hoffman) be made parties, and you said you did not want to do it; and I said 'all right, it is your law suit, and you may proceed in your own way,' Now the reason you did not want to make them parties then is not really obvious, but you frankly stated it: That had you made them parties, they would have appealed. Now the right to appeal is a substantial right." (Relators Ex 7 p. 5-6).

36. Judge Fisher then proceeded to comment further on the omission of White and Hoffman as parties and said:

"If, *consciously,* the court could proceed in a mandamus case against one of numerous parties and issue its mandate to him, and then hold the others, who are not parties to the law suit, accountable for the performance of the mandate, there would be a very
621 fine opportunity to deny to those parties due process of law." (See Relators Exhibit 7).

37. Judge Fisher thus admitted his knowledge of the lack of necessary parties and that he did *consciously* enter the mandamus judgment with such knowledge, and said

that since that time he had given that fact consideration, and in light of such consideration discharged the rule.

38. Before Judge Fisher had discharged the rule to show cause and denied the prayer of said petition, the candidates on April 5, 1945, moved over to the Superior Court of Cook County, and filed their complaint for mandamus to compel the Village Clerk to place said tickets on the ballot without regard to the decision of the Electoral Board to the contrary.

## SUPERIOR COURT COMPLAINT

39. The mandamus complaint under which the mittimus here in question was issued recites that the candidates duly filed a nomination petition or papers with the Clerk of the Village of Lyons under the head of Regular Peoples Party; that White, pretending to act as Village Clerk, sent the nominating papers to Judge Jarecki with objections thereto filed by two legal voters of the Village
622 with information that the Village President was a candidate for re-election, and that the Statute made the County Judge Chairman of the Municipal Electoral Board of which Louis Hoffman, as senior trustee, and he, White, as Village Clerk, were the other two members; the letter requested Judge Jarecki to call the Board together, notify all persons and take charge as chairman. The complaint then alleges that in a mandamus proceeding brought in the Circuit Court by the candidates against Edmund K. Jarecki as hereinafter described and designated, "instituted against Jarecki only as chairman of the purported Municipal Officers Election Board, it was alleged and contended that the Municipal Electoral Board was illegal and invalid and without authority of law to pass upon objections to nominating papers; that the States Attorney appeared for Judge Jarecki and by direction of the court and by consent of Counsel for all parties to the suit, the case was heard on March 26, and a judgment entered upon demurrer ore tenus of Judge Jarecki for his failure to plead, that the Board was illegally constituted for the particular reason that Ralph E. White, while purporting to act as Village Clerk of the Village of Lyons was not in truth and in fact Clerk of the said Village at the time of the convening of the Electoral Board, and therefore

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623 had no power to act as a member of the Electoral Board; that the court then ordered Judge Jarecki to enter a finding to the effect that the Electoral Board as convened was not properly and lawfully constituted under the law and should be dissolved; that Judge Jarecki forthwith dissolve the Board and return all papers to the Village authorities of the Village of Lyons. It is then alleged that Judge Jarecki obeyed the order, made findings, dissolved the Board, and returned all papers to Ralph E. White, Clerk of the Village. They then allege that White had been acting as Clerk in the matter of said election, but that Joseph F. Janda was the actual and duly acting Clerk, and asked the court to determine who the Clerk might be; they allege that a demand was made on April 3, 1945, upon both White and Janda to be put on the ballot.

## ACTION OF ELECTORAL BOARD IGNORED

40. No allegation is made of the action of the two members of the Municipal Electoral Board in making a report of the action of the Board on March 23, 1945, in which they reported that objections to the said ticket had been sustained by the Board.

624 41. Motion was made to strike the complaint and dismiss the complaint on the ground that the mandamus judgment of the Circuit Court did not vest Judge Jarecki with jurisdiction to dissolve the Board; that the Board was established by law, lawfully constituted and its judgments and findings valid; that the Circuit Court had no power to try the title of White to the office of Village Clerk and the mandamus judgment of the Circuit Court was void for want of jurisdiction over the Electoral Board. The court overruled the motion instanter and the defendants answered instanter.

42. The answer of the defendants set out the history and substance of all prior proceedings with copies of the nominating papers, the objections thereto, the notice to Judge Jarecki, the call for the Electoral Board to meet, a transcript of its proceedings had on March 23, 1945; and those of March 27, 1945; and the further proceedings of the Board after Judge Jarecki disaffiliated himself from said Board; a transcript of the record in the said Circuit Court case; and the entire written record down to the date of the answer. (Abst 22-113).

625 43. In the answer, defendants contended that the Circuit Court had no jurisdiction over the Electoral Board, that the judgment of the Circuit Court was wholly void and the action of White and Hoffman in completing the proceedings and reporting the decision of the Electoral Board was in accordance with their statutory duty, res adjudicata, legal, valid and final; and that no duty rested upon White to place the said ticket upon the ballot.

44. No reply was filed by the plaintiffs to the answer so filed.

45. There was no trial and the judgment of the Superior Court was made upon the pleadings. The judgment recites that evidence was heard but the report of proceedings showns that none was heard except what the record showed.

## THE SUPERIOR COURT IGNORED THE ACTION OF THE ELECTORAL BOARD

46. The judgment of the Superior Court orders that a writ of mandamus issue directing White and Janda, insofar as either of them was acting as Village Clerk, to print or cause to be printed the Regular Peoples Party
626 candidates on the official ballot for said election, and to cancel and destroy all ballots already printed, and to recognize said nominating papers as if no objections had ever been filed against them.

47. The ticket was not printed on the ballot for the election.

## THE CONTEMPT PROCEEDING IN THE SUPERIOR COURT

### *Petition for Rule to Show Cause*

48. On April 18, 1945, the candidates filed a petition in the Superior Court for a rule on White and Janda to show why they should not be adjudged in contempt of court. The petition is based upon the record and shows that neither relator nor Janda complied with the mandamus order, in that they did not destroy the prepared ballots, did not print new ballots containing the names of the said candidates for use in said election.

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WHITE ANSWERED THE RULE TO SHOW CAUSE

49. Relator in response to said rule to show cause again pleaded the prior proceedings in the cause and the
627 facts as hereinabove set forth. White alleged that he was at all times in question the duly elected Village Clerk, and that he did not willfully act in contempt of the court, but that he performed only his duties as required by law.

DEFENSE OF LACK OF JURISDICTION PLEADED

50. Relator claimed the Superior Court was acting without jurisdiction and set out the following:

"Respondent says that Article III of the Constitution of the State of Illinois provides as follows:

Distribution of Powers

"Departments of Government

"The powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

"And this respondent shows that as Village Clerk of the Village of Lyons he is an officer of the executive department of the Constitutional government of the State and as such while in the due exercise of his legal duties
628 he is not amenable to the control or direction of the judicial department of the government, and that the jurisdiction of the courts of Illinois does not extend to modify, change or excuse the statutory duties of municipal officials, nor have the courts of this State any power or jurisdiction to compel a municipal officer of the executive department to take or do an illegal act or an act in violation of his sworn duty or his official oath.

"This respondent answering said rule further says: That mandamus had no jurisdiction to create new duties nor enforce illegal acts but only to enforce the performance of legal duties where the performance of legal duties is refused.

"This respondent answering said rule further says that when the said Lyons Municipal Electoral Board filed its ruling and decision upon said objections to the said "Regular Peoples Party" certificates of nominations or nomination papers with the Village Clerk, it became the duty of this respondent to prepare the official ballots for said election in accordance with the tickets legally filed, and furnish them for the judges of election of said Village
629 pursuant to the statute, and this was the duty under the law imposed upon this respondent.

"This respondent answering said rule further alleges that this court was advised by the pleadings on file herein, which fact stood admitted, that the objections to the said certificates of nomination or nomination papers of the "Regular Peoples Party" had been sustained by the final action of the said Lyons Municipal Electoral Board and that pursuant to the decision of said Electoral Board no such "Regular Peoples Party" existed for purposes of said election.

"Answering said rule further this respondent alleges that no legal duty rested upon him as Village Clerk to print a ballot for said election with the names of the candidates of the said "Regular Peoples Party" ticket and that this court had no jurisdiction to enter any mandamus order whereby to require this respondent to violate the election laws in such case made and provided and to do an act illegal and in violation of law.

"Notwithstanding that no mandamus order, mandamus judgment or preemptory writ of mandamus issued in
630 pursuance to said order was ever served upon this respondent and further answering said rule says:

That in entering said mandamus order the court invaded the jurisdiction of the executive department of the government and the order directing the issuance of said writ to destroy ballots already printed and to print new ballots with "Regular Peoples Party" ticket thereon is void and of no force or effect.

"Wherefore, this respondent, by reason of the above and foregoing answers prays this honorable court for an order dismissing the rule herein described."

51. White also set up as a defense that the Superior Court had no power to disregard the proceedings of the Electoral Board and hold them for naught, and to disre-

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gard the provisions of Chapter 46 of the Illinois Statutes pertaining to Electoral Boards and their proceedings, and had assumed jurisdiction where it had none, to compel White to disregard the law.

52. In passing on the rule and answer, the court heard only the testimony of White to the effect that he was Village Clerk at the time in question; that he received the nominating certificate of the Regular Peoples Party and sent it with the objections, affidavits and papers to
631 the Electoral Board consisting of Judge Jarecki, Hoffman and himself; that he knew that Judge Fisher had declared the Electoral Board illegally constituted and directed it to be dissolved and that on advice of counsel, he disregarded Judge Fisher's order. White said that he did not see a mandamus order of the Superior Court, and did not know that one had been issued, that he was represented by counsel in the matter.

53. The court then entered its order ruling White in contempt of court, and sentencing him to the County Jail for six months.

54. The Appellate Court on appeal confirmed the orders in the mandamus case and the contempt case.

55. The Appellate Court held that the trial court had jurisdiction to review the decision of the Municipal Electoral Board, and concluded that the Superior Court had power to enter its judgment in mandamus and to punish its disobedience by contempt process. It did not, however, consider the question of jurisdiction as affecting the
632 defense of lack of due process of law, on the ground, as it asserted, that the Supreme Court had "exclusive jurisdiction to determine constitutional questions."

56. The Supreme Court of Illinois denied leave to appeal from the Appellate Court of Illinois.

57. The United States Supreme Court at the November Term, 1947, cases No. 968 and 969 refused to grant certiorari to the Appellate Court of Illinois, First District.

58. The Circuit Court of Cook County (Judge Brothers) refused to discharge relator in a Habeas Corpus proceeding.

59. The Supreme Court of Illinois denied a petition for leave to file a petition for Habeas Corpus in that court.

The Superior Court of Cook County Dismissed a petition for Error Coram Nobis.

633 CONCLUSIONS OF LAW

I. The Village of Lyons is organized as a Village under the general laws of Illinois, and its annual election was duly called and held on April 17, 1945.

II. Ralph E. White was the duly elected, qualified, and de jure Village Clerk of the Village of Lyons, and served as such from 1941 to April 17, 1945.

III. That the Village Electoral Board was duly organized on March 23, 1945, and consisted of Ralph E. White, Village Clerk, Louis Hoffman, senior Village Trustee, and Edmund K. Jarecki, County Judge as chairman, and that said Board had jurisdiction to hear all objections filed against nomination papers of candidates for said annual election.

IV. That the objections filed against the Regular Peoples Party ticket stating that the population of said Village was over 5,000, and that said Regular Peoples Party had no right under the statute, being an existing political party, to nominate a ticket by caucus, was an objection
634 within the jurisdiction of the said Electoral Board to hear.

V. That the said objections were heard, passed upon, and sustained by the said Electoral Board and the report of the action of said Board was duly made and filed with the Village Clerk of said Village, and that it then became and was the duty of Ralph E. White as Village Clerk to obey and abide by said ruling of said Board.

VI. That the jurisdiction of said Electoral Board over said objections was exclusive and final.

VII. That the mandamus proceeding in the Circuit Court of Cook County entitled People of the State of Illinois ex rel Lyman F. Martin vs. Edmund K. Jarecki, No. 45 C 2198 and its judgment rendered against Edmund K. Jarecki as chairman of the Lyons Electoral Board was void for lack of jurisdiction over said Board or the subject matter of the jurisdiction of said Electoral Board.

VIII. That the mandamus judgment entered in said Circuit Court case No. 45 C 2198 did not bind said Edmund K. Jarecki because of lack of jurisdiction over
635 subject matter, and did not bind Ralph E. White and Louis Hoffman because they were not parties to said suit.

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IX. That Edmund K. Jarecki erred in refusing to further participate in the proceedings of said Electoral Board; that the action of said White and Hoffman in reporting the decision of the Electoral Board on the said objections after Edmund K. Jarecki had withdrawn and refused to act as chairman, was proper and legal and in compliance with their duty under the Statute.

X. That there were no allegations of fraud or fraudulent practices in the matter of filing objections to said ticket nor in the hearing of said objections and said objections presented a question of fact for said Electoral Board to decide, and having decided said issue, the decision of said Electoral Board became final, conclusive and binding upon all courts and not subject to collateral attack.

XI. That the proceedings in the Superior Court in the mandamus case known therein as People of the State of Illinois ex rel Lyman F. Martin, et al, vs. Ralph E.
636 White, and Joseph P. Janda, No. 45 S 6174, were void and the mandamus judgment therein rendered was void for want of subject matter; that the decision and judgment of said Village Electoral Board were final, and res adjudicata; that the jurisdiction of said Electoral Board was exclusive and Ralph E. White as Village Clerk of the Village of Lyons was by statute required to obey the finding, decision, and judgment of said Electoral Board.

XII. That the judgment in mandamus of the Superior Court was based upon the void judgment of the Circuit Court of Cook County and its judgment was likewise void.

XIII. That the judgment of the Superior Court in requiring Ralph E. White to destroy the ballots he had prepared for said election and to print new ballots and to place said ticket to which objections had been sustained, upon such new ballots, was void.

XIV. That Ralph E. White properly refused to comply with said mandamus order of the Superior Court of Cook County, and that his acts in so doing were not contemptuous; and that he was not guilty of contempt of said
637 court in failing to comply with said mandamus order.

XV. That the Electoral Boards are created by the Statute of Illinois and are special forums or courts created to function speedily in the decision of questions arising upon objections to the nominating papers of candidates in political elections, and function outside of the realm of

the judicial department; that said Electoral Boards are vested with exclusive jurisdiction over the matters assigned by law to them for decision and their decisions are final and binding on all courts, are res adjudicata and not subject to collateral attack; and that though such decisions may be erroneous they are not void; that the Supreme Court of Illinois has so decided and its decision is binding here. (See people ex rel Murray v. Rose, 211 Ill. 249, 251). That the Superior Court of Cook County exceeded its jurisdiction in ignoring the proceedings of said Electoral Board and in directing Ralph E. White to ignore its decision and to print said ticket upon the ballot in violation of the decision of said Electoral Board.

XVI. That the Civil Practice Act of Illinois provides that appeals in cases decided in the courts of Illinois
638 are continuations of the cases while on appeal and are not new cases.

XVII. That the opinion filed by the Appellate Court of Illinois for the First District of Illinois erroneously refused to consider the question of due process of law on a mistaken theory that it called for a construction of the constitution and that White's appeal should have been to the Supreme Court direct, and its refusal to pass upon the question of due process of law denied to White a substantive right.

XVIII. That Ralph E. White has exhausted his remedies in an effort to be relieved of his imprisonment; that he sought to have said Superior Court cases reviewed by the Supreme Court of Illinois and the Supreme Court of the United States, each of which courts refused to take the cases for review; that the Supreme Court of Illinois refused to permit said White to file a Habeas Corpus petition in that court, and the Circuit Court of Cook County refused to discharge White on a Writ of Habeas Corpus, and remanded him to the sheriff's custody; and the Superior Court of Cook County refused to grant the Writ of
639 Error Coram Nobis to White.

XIX. That Ralph E. White is a citizen of the United States, that he is being imprisoned by the Sheriff of Cook County without warrant of law, that the mandamus judgment of the Superior Court is void, and the order holding White in contempt for disobedience to said void mandamus order is likewise void, as is the mittimus by

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which he is imprisoned; that Ralph E. White is held and imprisoned without due process of law, and without right or legal authority, and this court is vested with power and jurisdiction to order him to be discharged by quashing the return to said Writ of Habeas Corpus.

XX. The said return of the respondent Sheriff of Cook County to the Writ of Habeas Corpus is wholly insufficient to support the said mittimus or to justify the imprisonment of the Relator, White, under said mittimus.

XXI. WHEREFORE, it is ordered that the return of the respondent Sheriff to said Writ of Habeas Corpus
640 be and it is hereby quashed, and that the relator, Ralph E. White, be forthwith discharged from custody under said mittimus and that the parties go hence without day.

Igoe,

*Judge.*

Chicago, April 15, 1948.

641 And on the same day to wit, on the 15th day of April, 1948, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

642 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—No. 47-C-1832) * *

Disposition herein having been heretofore taken under advisement by the Court after due deliberation and the Court being now fully advised in the premises finds that the Relator, Ralph E. White, is illegally held in the custody of the respondent, Elmer Michael Walsh, Sheriff of Cook County, Illinois, and it is therefore

CONSIDERED AND ORDERED by the Court that the return to the Writ of Habeas Corpus herein be and it is hereby quashed, that the relator, Ralph E. White, be and he is hereby discharged from the custody of the respondent, Elmer Michael Walsh, that the bond of said relator be and it is hereby cancelled and that the surety thereon be and is hereby released from further liability thereunder.

643 And afterwards on, to wit, the 12th day of May, 1948, came the Respondent by his attorneys and filed in the Clerk's office of said Court his certain Notice and Motion in words and figures following, to wit:

644 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—No. 47-C-1832) * *

NOTICE

To: Mr. Ode L. Rankin
134 N. La Salle Street, Chicago
Mr. Joseph I. Bulger
139 N. Clark Street, Suite 1804
Attorneys for Relator

Please Take Notice that on Wednesday, May 12, A. D. 1948, at the opening of court at 2 o'clock P. M., or as soon thereafter as counsel may be heard, I shall appear before the Hon. Michael L. Igoe, a Judge of the United States District Court, in the room usually occupied by him as a court room in the Old Post Office Building, Chicago, and shall then and there present a certain motion for a certificate of probable cause for an appeal in the above entitled cause, and also to move the court to waive the filing of a bond for costs in the above entitled cause, at which time and place you may appear if you see fit.

William J. Tuohy,
*State's Attorney of Cook County*
Criminal Court Building
26th and California Avenue
Chicago.

Received a copy of the above and foregoing notice, together with a true and exact copy of the motion therein referred to, this day of May, A. D. 1948.

Ode L. Rankin,
Joseph I. Bulger,
*Attorneys for Relator.*

645 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—No. 47-C-1832) * *

MOTION

Now comes William J. Tuohy, State's Attorney of Cook County, Illinois, attorney for respondent herein, and respectfully moves that this court issue a certificate of probable cause for an appeal in the above entitled cause, in accordance with Title 28 U.S.C.A., Chap. 14, Section 466.

William J. Tuohy,
*State's Attorney of Cook County*
*Attorney for Respondent.*

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646 And on the same day to wit, on the 12th day of May, 1948, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

647 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

CERTIFICATE OF PROBABLE CAUSE FOR APPEAL

I Michael L. Igoe, a Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division, certify hereby that there is probable cause for an appeal in the above entitled cause.

Igoe

Dated May 12, 1948, at the Cook County, Illinois.

648 And on the same day, to wit, the 12th day of May, 1948 came the Respondent by his attorneys and filed in the Clerk's office of said Court his certain Notice of Appeal in words and figures following, to wit:

649 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

NOTICE OF APPEAL

To: Mr. Ode L. Rankin,
134 N. La Salle Street, Chicago.
Mr. Joseph I. Bulger,
139 N. Clark Street, Suite 1804,
Attorney for Petitioner.

PLEASE TAKE NOTICE that Elmer Michael Walsh, Sheriff of Cook County, Illinois, respondent herein, by William J. Tuohy, State's Attorney of Cook County, Illinois, his Attorney, hereby appeals to the Circuit Court of Appeals of the United States for the Seventh Circuit from that entire judgment, order or decree entered in and by the District Court of the United States for the Northern District of Illinois, Eastern Division, on or about the 15th day of April, A. D. 1948, discharging the petitioner herein, the Honorable Michael L. Igoe, Judge Presiding.

Wm. J. Tuohy,
*State's Attorney of Cook County,*
Criminal Court Building,
26th and California Avenue,
Chicago 8, Illinois.

650 PROOF OF SERVICE

Received a copy of the foregoing Notice of Appeal this 12th day of May, A. D. 1948.

Ode L. Rankin,
Joseph I. Bulger,
*Attorneys for Petitioner.*

(Attached hereto is the following certificate):

651 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 12th day of May, 1948, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Mr. Ode L. Rankin,
29 West Quincy Street,
c/o Majestic Hotel,
Chicago 4, Illinois.

Mr. Joseph I. Bulger,
139 North Clark Street,
Suite 1804,
Chicago 2, Illinois.

(SEAL)

Roy H. Johnson,
*Clerk.*

652 And on, the same day, to wit, the 19th day of May, 1948 came the Respondent-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points in words and figures following, to wit:

653 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

STATEMENT OF POINTS.

Now comes Elmer Michael Walsh, Sheriff, Cook County, Illinois by and through William J. Tuohy, State's Attorney

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of Cook County, his attorney, and says that he relies upon the following points in the prosecution of his appeal from the final order and judgment entered by the District Court in the above entitled cause on April 15, 1948:

1. The District Court erred in entertaining the instant petition for a writ of habeas corpus when it had no jurisdiction.

2. The District Court erred in overruling respondent-appellant's motion to dismiss petitioner-appellee's petition for writ of habeas corpus when no constitutional or federal question was presented by said petition; and when petitioner-appellee failed to show any merit in his substantive contentions.

3. The District Court erred in issuing the writ of habeas corpus when petitioner-appellee was legally detained in the custody of respondent-appellant under and by virtue of a valid and subsisting judgment for willfully and contemptuously refusing to comply with an order of the
654 Superior Court of Cook County entered in a Mandamus suit, which contempt judgment had been affirmed by the Appellate Court of Illinois, First District and which judgment of affirmation the Supreme Court of Illinois and the Supreme Court of the United States of America refused to review by denial of petitioner-appellee's application for a writ of certiorari.

4. The District Court erred in entertaining the petition for a writ of habeas corpus and issuing said writ when it appeared that petitioner-appellee failed and neglected to exhaust his remedies in the State Courts by appealing from the denial of his petition in the nature of a writ of error *coram nobis* in the Superior Court of Cook County upon the judgment for contempt.

5. The District Court erred in finding that the Superior Court of Cook County lacked jurisdiction to Mandamus an Election Board or members thereof in connection with objections filed to certain nominating petitions and the hearing on said objections, and finding, further, that the contempt order predicated thereon is void.

6. The District Court erred in finding that the "due process clause" of the United States Constitution was violated in the instant case, to-wit, that the petitioner-appellee's constitutional rights were violated in the entry of the judgment of contempt.

7. The judgment of the District Court is contrary to law.

8. The judgment of District Court is contrary to the evidence.

9. The judgment of the District Court is contrary to law and the evidence.

655 10. The District Court erred in not quashing the writ of habeas corpus, in not dismissing the proceedings, and in not remanding petitioner to the custody of the proper State authorities.

William J. Tuohy,
*State's Attorney of Cook County,*
Criminal Court Bldg.,
Chicago 8, Illinois,
*Attorney for Respondent-Appellant.*

656 And afterwards on, to wit, the 19th day of May, 1948 came the Appellant by his attorneys and filed in the Clerk's office of said Court his certain Designation of Contents of Record on Appeal in words and figures following, to-wit:

657 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

## APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Appellant, Elmer Michael Walsh, Sheriff, Cook County, Illinois, hereby designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled cause:

1. Petition for writ of habeas corpus to the United States District Court for Northern Illinois, Hon. Michael L. Igoe, Judge, filed December 19, 1947.

2. Order entered December 19, 1947 directing the State's Attorney of Cook County to show cause why a writ of habeas corpus should not issue.

3. Answer to rule to show cause and motion to dismiss petition filed December 29, 1947.

4. Order entered December 29, 1947 overruling motion to dismiss, and directing that writ of habeas corpus issue forthwith returnable on December 30, 1947 at 10:00 A.M.;

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that respondent file answer to said writ in ten (10) days; and that cause be set for hearing on petition and answer on January 26, 1948.

5. The writ of habeas corpus issued on December 29, 658 1947 and the service thereon endorsed.

6. Respondent's return to the writ with exhibits thereto attached filed January 9, 1947.

7. Transcript of proceedings had before Judge Igoe on December 29, 1947, filed on January 26, 1948.

8. Transcript of proceedings had before Judge Igoe on January 26, 1948, now being prepared by the official reporter.

9. Order of January 28, 1948 continuing cause to January 27, 1948.

10. Order of January 27, 1948 continuing cause to April 9, 1948.

11. Order of April 9, 1948 continuing cause to April 15, 1948.

12. The opinion by Judge Igoe filed April 15, 1948.

13. The findings of fact and conclusions of law, filed April 15, 1948.

14. Order quashing return to writ of habeas corpus and discharging petitioner, entered on April 15, 1948.

15. Notice, motion and certificate of probable cause for appeal filed on May 12, 1948.

16. Notice of appeal and proof of service filed on May 12, 1948.

17. Certificate of mailing.

18. Appellant's designation of contents of record on appeal, and proof of service thereof.

19. Statement of points.

Wm. J. Tuohy,
*State's Attorney of Cook County,*
*Attorney for Appellant.*

659 PROOF OF SERVICE

Received a true and exact copy of the above and foregoing Appellant's Designation of Contents of Record on Appeal this 19th day of May, A. D. 1948.

J. I. Bulger,
Ode L. Rankin,
*Attorneys for Appellee.*

660 And afterwards on, to wit, the 25th day of May, 1948 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures, to wit:

661 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

STIPULATION

It is agreed and stipulated by and between the parties hereto by their respective counsel that the original exhibits be made a part of the record on appeal and used in lieu of copies thereof.

William J. Tuohy,
*State's Attorney of Cook County,*
*Attorney for Respondent. . . . .*
By John Gallagher,
James V. Cunningham,
*Assistant State's Attorneys.*
Ode L. Rankin,
Joseph I. Bulger,
*Attorneys for Petitioner.*

662 And on the same day, to wit, on the 25th day of May, 1948 being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe District Judge, appears the following entry, to wit:

663 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption—47 C 1832) * *

On stipulation of the parties by their attorneys filed herein it is

ORDERED that the original exhibits be made a part of the Record on Appeal herein to the United States Circuit Court of Appeals for the Seventh Circuit in lieu of copies thereof.

664 Northern District of Illinois } ss:
Eastern Division }

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do here-

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by certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Appellant's Designation filed in this Court in the cause entitled: United States ex rel. Ralph E. White, Petitioner, *vs.* Elmer Michael Walsh, Sheriff, Cook County, Illinois, Respondent, No. 47 C 1832, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the Original Exhibits which are incorporated herein by direction of this Court, upon Stipulation of the parties.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois this 3rd day of June, 1948.

(SEAL)

Roy H. Johnson,
*Clerk.*

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of the record, filed on July 21, 1948, in:

Cause No. 9635.

United States of America, ex rel. Ralph E. White,
*Petitioner-Appellee,*

*vs.*

Elmer Michael Walsh, Sheriff of Cook County, Illinois,
*Respondent-Appellant,*

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of May, A. D. 1949.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Court of Appeals for the Seventh Circuit.*

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At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the seventh day of October, in the year of our Lord, one thousand, nine hundred and forty-seven, and of our Independence the one hundred-seventy-second.

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United States of America, *ex rel.* Ralph E. White, *Petitioner-Appellee,* vs. Elmer Michael Walsh, Sheriff, Cook County, Illinois, *Respondent-Appellant.*

No. 9635.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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And afterward, to-wit, on the twenty-third day of June, 1948, there was filed in the office of the Clerk of this Court an appearance for the appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 9635.

U. S. A., *ex rel.* Ralph E. White,
*Petitioner-Appellee,*

*vs.*

Elmer Michael Walsh, Sheriff, etc.,
*Respondent-Appellant.*

The Clerk will enter our appearance as counsel for Appellant.

Wm. J. Touhy,
*States Attorney,*
By John T. Gallagher,
James V. Cunningham,
*Asst. States Attorneys,*
26th & California Ave.,
Chicago 8, Illinois.

Endorsed: Filed Jun. 23, 1948. Kenneth J. Carrick, Clerk.

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And afterward, to-wit, on the fifteenth day of July, 1948, there was filed in the office of the Clerk of this Court an appearance for the appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 9635.

U. S. A., *ex rel.* Ralph E. White,
*Petitioner-Appellee,*

*vs.*

Elmer Michael Walsh, Sheriff, etc.,
*Respondent-Appellant.*

The Clerk will enter our appearance as counsel for Appellee.

Joseph I. Bulger,
139 N. Clark St., Room 1804,
Ode L. Rankin,
139 N. Clark St., Room 1804,
Chicago, Ill.,
Phone: State 4426.

Endorsed: Filed Jul. 15, 1948. Kenneth J. Carrick, Clerk.

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And afterward, to-wit, on the eighteenth day of January, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

January 18, 1949.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

| | |
|---|---|
| United States of America, *ex rel.* Ralph E. White, *Petitioner-Appellee,* *vs.* Elmer Michael Walsh, Sheriff of Cook County, Illinois. | Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. |

No. 9635.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. James V. Cunningham, counsel for the appellant, and by Mr. Ode L. Rankin, counsel for the appellee, and the Court takes this matter under advisement.

**And afterward, to-wit, on the twentieth day of April, 1949, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:**

**IN THE UNITED STATES COURT OF APPEALS**

**For the Seventh Circuit.**

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**No. 9635. October Term, 1948, April Session, 1949.**

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|---|---|
| The United States of America, *ex rel.*, Ralph E. White, *Petitioner-Appellee*, *vs.* Elmer Michael Walsh, Sheriff of Cook County, Illinois, *Respondent-Appellant.* | Appeal from the District Court for the Northern District of Illinois, Eastern Division. |

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**April 20, 1949.**

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Before MAJOR, *Chief Judge*, KERNER, *Judge*, and LINDLEY, *District Judge*.

LINDLEY, *District Judge*. This is an appeal from a judgment in a habeas corpus proceeding discharging relator from custody under sentence for six months imprisonment for contempt of court, because of his refusal to comply with a judgment for a writ of mandamus awarded by the Superior Court of Cook County, Illinois. Our ultimate question of whether the sentencing court was without statutory authority to issue the contempt order, as the District Court found, in turn, depends upon whether that court had authority to issue the writ which relator refused to obey, for, if the order for the writ was void, the contempt order was likewise a nullity. Decision upon these questions necessitates a somewhat extended consideration of the facts and the applicable Illinois law.

Relator White was elected clerk of the village of Lyons, Cook County, Illinois, in 1941, for four years ending April

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30, 1945. In March, 1945, as such clerk, he received nominating papers of the "Regular People's Party," naming candidates for village officials in the election to be held April 17, 1945. These candidates had been nominated by a party caucus, and the certificates included the necessary statutory showing that the party was organized and legally existing in the village. Two electors filed objections, alleging that the village had a population of over 5000, a fact which, if true, under the Illinois Statute, precluded nomination by caucus. Ill. Rev. Statutes, Chapt. 46, Sec. 10-1 to 10.

This simple issue being thus joined, it was necessary to resort to the statutory means prescribed for deciding it. The Election Code of Illinois creates a "Municipal Officers Electoral Board" composed of the village president, as chairman, the clerk, and the senior trustee and provides that "The * * * board * * * shall decide whether or not the certificate of nomination or nomination papers on file are valid or whether the objections thereto should be sustained and the decision of a majority of the * * * board shall be final," and that, within 24 hours after it has reached its decision, the board shall report its proceedings to the clerk who "shall abide by and comply with the ruling so made." Ill. Rev. Stats., Chapt. 46, Sec. 10-10.

Provisions similar to the one in this statute, that the decision of a majority of the board "shall be final," have been construed many times by the Illinois courts. Thus the Supreme Court of Illinois, in *People ex rel. Murray* v. *Rose*, 211 Ill. 249, said: "The legislature, by the act named, has created a special forum or court to which such matters are referable, and that body has seen fit to declare by statute that the decision of the body there provided for shall in such matters be final. * * * the judgment of the proper tribunal has been invoked and has been received, and although it may be contrary to the law, as contended by the relators, that does not at all interfere with the jurisdiction of the body that tried it, and does not authorize us in a proceeding for mandamus, to review the action of such tribunal." To the same effect are *People ex rel. Williams, et al.* v. *Rose*, 211 Ill. 259; *People ex rel. McKinlay* v. *Rose*, 211 Ill. 252; *People ex rel. Perry* v. *Koerner*, 365 Ill. 521. Hence, only if the board was illegally constituted or acted arbitrarily or fraudulently, were its actions subject to judicial review, *People ex rel. Martin, et al.* v. *White, et al.*,

329 Ill. App. 81; otherwise its decision was final and conclusive.

The president of the village board was a candidate for re-election. Under the statute, in such a contingency, his duties as chairman of the electoral board devolved upon the county judge, the Honorable Edmund K. Jarecki. As soon as he received the objections to the nominating papers, the clerk forwarded the papers and the objections to Judge Jarecki, who then called, for March 23, 1945, a meeting of the board consisting of: Judge Jarecki, chairman; Ralph White, (village clerk), and Louis Hoffman, (senior village trustee). At the hearing, a dispute developed as to whether the federal census or a later village census was the proper basis for determination of the village population. The chairman read the Illinois statute; announced that he believed that the federal census of 1940, showing 4960 inhabitants, controlled, and voted to overrule the objections and to place the candidates' names on the ballot. The other two members, constituting a majority of the board, were of the opinion that the municipal census, showing more than 5000 inhabitants, controlled; hence, they voted to exclude the names from the ballot.

The candidates challenged the right of White to participate as a member of the board on the ground that he was not the village clerk. This contention was not considered but, after the vote had been taken, the chairman agreed to hold up the board's decision until noon on March 27, so that counsel might have opportunity to seek a determination in court of whether White had a right to sit as a member. Thus, it appears that no final action was taken at this hearing.

The court proceeding referred to was a petition for mandamus filed in the Circuit Court the previous day, praying that the board be dissolved, in which Judge Jarecki was sole defendant. The petition, as amended, averred that one Joseph Janda, not White, was clerk. Without White or Janda having been made parties, an order was entered finding that White was not clerk and that the board was, therefore, illegally constituted. The court directed the chairman to dissolve the board and return all papers to the village authorities. Judge Jarecki then wrote White, as clerk, enclosing the papers and stating that the Circuit Court had issued a writ of mandamus "on the ground that

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the board was illegally constituted", and, further, that the "mandamus action automatically ends the action."

On the following day, March 27, at noon, the members of the board and the interested parties, pursuant to adjournment, met in the chambers of Judge Jarecki, who reported that he had returned the papers to White, in pursuance of the Circuit Court's order. When the other two members expressed their desire to complete their consideration and determination of the matter, Judge Jarecki declined to participate further. White and Hoffman then retired to the county clerk's office and there completed the proceeding; passed and directed the filing of a resolution reciting that White was the duly elected, qualified and acting village clerk and that the village population exceeded 5000 and resolving that the nominations in question were, therefore, invalid and sustaining the objections and adjourned. Report of the board's action was filed in the village clerk's office and the several candidates affected were notified that their names would not appear on the ballots.

The candidates then requested the Circuit Court to adjudge White and Hoffman in contempt of the judgment in mandamus because, subsequent to its entry, they had completed and filed the record of the proceeding. The court, however, held that it had no jurisdiction to do this, inasmuch as neither of those men had been made parties to the mandamus action and reminded counsel that the court had so advised him when he applied for judgment, but that counsel had replied that he did not want to make them parties because they would then have the right to appeal. Commenting further on the omission of White and Hoffman as parties, Judge Fisher very aptly and appropriately remarked: "If, consciously, the court could proceed in a mandamus case against one of numerous parties and issue its mandate to him, and then hold the others, who are not parties to the law suit, accountable for the performance of the mandate, there would be a very fine opportunity to deny to those parties due process of law." This comment was undoubtedly inspired by the court's familiarity with well known ruling principles announced in such decisions as that in *Baker* v. *Baker*, 242 U. S. 394, 403: "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard. * * * To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice."

However, the day before this ruling by Judge Fisher, the candidates had filed a complaint in the Superior Court against White and Janda for a writ of mandamus to compel the candidates' names to be placed on the ballot, in which petitioners averred that Janda not White, was clerk, and requested the court so to determine. In his answer, White set forth the proceedings before the board, averred that he was clerk, and challenged the court's jurisdiction to review the decision of the board. The candidates made no reply to White's answer, but offered a transcript of the record of what had transpired in the Circuit Court in the cause wherein Judge Fisher had refused to act against White because he was not a party. Without trial of any issue, the application was granted by the Superior Court and judgment entered. The court directed its order to both White and Janda, directing them to destroy the prepared ballots and to substitute new ones containing the names of the petitioning candidates.

Neither White nor Janda complied. Thereupon they were ordered to show cause why they should not be held in contempt. White answered, setting up absence of jurisdiction of the court to issue the mandamus order and claiming lack of due process of law and violation of both state and federal constitutions. He again averred that he was clerk. At the hearing, White testified that at all times concerned he was clerk and the court expressly found "that the respondent, Ralph E. White, was the village clerk of the village of Lyons between the period from the filing of the mandamus suit in this proceeding and up to and including the 17th day of April, A. D. 1945." The formal order which followed included the specific finding that White was clerk during all the time concerned.

It must be remembered that the only ground ever asserted for a court decision that the electoral board was not legally constituted was that White was not clerk. In other words, the candidates built their case wholly upon the proposition that the board was illegally constituted for the sole reason that White was not clerk, and that, therefore, the Superior Court had jurisdiction to review its proceedings in a mandamus suit. Yet in the proceeding in which authority of the court to act was based upon an averment that White was not clerk, the court expressly found that he was, in fact, clerk at all times. That being so, the board was legally constituted and its action final

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and binding in the courts, unless arbitrary or fraudulent. To us it is an anomalous and startling doctrine that a court, depending solely upon a specific fact for its jurisdiction, may, when it finds that that fact does not exist, persist in exercising jurisdiction.

White prosecuted appeals to the Illinois Appellate Court from both the mandamus and contempt orders of the Superior Court. The appeals were consolidated and the judgments affirmed in *People ex rel. Martin, et al.* v. *White, et al.*, 329 Ill. App. 81. In this appeal, White's chief contention, as it had been throughout, was that the Superior Court had no jurisdiction to review the action of the board. We have observed that the courts of Illinois have construed the applicable section and similar sections of the Illinois statutes to mean that the decision of the board is final when it is reached by a legally constituted board, acting in a legal manner, and not fraudulently or arbitrarily. In arriving at the conclusion that the board's action was subject to judicial review, the Appellate Court made the following statement: "Respondents contend that courts have no jurisdiction to review the judgment of an electoral board, and in support of that contention they rely upon *People ex rel. Murray* v. *Rose*, 211 Ill. 249; *People ex rel. McKinlay* v. *Rose*, 211 Ill. 252; *People ex rel. Williams* v. *Rose*, 211 Ill. 259 and *People ex rel. Perry* v. *Koerner*, 365 Ill. 521, * * *. The decisions upon which respondents rely can be readily distinguished under the facts in this proceeding. *Since no decision on the objections in the instant case was made by a validly constituted electoral board*, relators had the right to have their names placed upon the ballot * * *. In *Murray* v. *Rose*, and *Williams* v. *Rose* decisions on objections to nominees had been made by validly constituted electoral boards, * * *." (Italics supplied.)

Thus, the Appellate Court's only foundation for its conclusion was that the board was illegally constituted and its order, therefore, void. Yet the only ground ever asserted for holding that the board was not validly constituted was that White was not village clerk, whereas the Superior Court based its contempt order upon its finding that White was clerk. Thus, we find the Appellate Court, apparently inadvertently relying on the Circuit Court order, which was ex parte, so far as White was

concerned, and which the issuing Judge himself declared void as against White and refused to enforce.[1]

However, the Appellate Court added that, even assuming that the board was legally constituted, the Superior Court had jurisdiction to review the action of a board "which was so clearly an abuse of power and so arbitrary as to amount to fraud." It will be remembered that the objections to the validity of the nominations of the Regular People's Party candidates were predicated solely on the averment that the population of the village of Lyons was over 5000. If, in fact, the official population exceeded 5000, the objections were well taken and the candidates were not entitled to have their names printed on the ballot. The record is barren of any evidence of any fraudulent conduct upon White's part in receiving the objections to the nominations or in the board's decision. Nor did White instigate the filing of the objections; in fact, it appears undisputed that they were filed by two dissatisfied members of the Regular People's Party. It is clear, therefore, that the Appellate Court's conclusion that the board acted arbitrarily was based solely upon the premise that the population of Lyons did not exceed 5000.

The record shows that the following Resolution was adopted in 1942 by the board of trustees of the village:

> Whereas, the population of the Village of Lyons has been increasing for the past two years and a census has not been taken for some time; and
>
> Whereas, because of the war, the Defense Corps of the Office of Civilian Defense have completed a survey and census in co-operation with the Village Officials, and
>
> Whereas, it is shown by a canvass of the registration returns of the various enumerators that the population shows the sum to be a total of 5424 persons, residing in this Village at this time.
>
> Now therefore, Be it resolved by the President and Board of Trustees, that the registration and enumeration of persons residing in the Village of Lyons,

[1] That the court relied upon the ex parte Circuit Court decision seems apparent from its language:

> "In the case at bar the mandamus judgment in the Circuit Court specifically found that White was not the Village Clerk, thereby disqualifying him from membership on the electoral board, and consequently that the board was not legally constituted to pass on the objections to relators' nomination papers."

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by the Defense Corps of the Office of Civilian Defense of Lyons, Illinois, which census has been taken under the auspices and in co-operation with the Village Officials, showing the population to be a total of 5424 persons, and the same is hereby adopted as the official Village Census of the Village of Lyons, Illinois.

That copies be filed with the Secretary of State and the U. S. Dept. of Commerce.

Passed and adopted this 11th day of August 1942.

Approved

Theofil T. Bulat
President.

Attest—Ralph E. White
Village Clerk.

This Resolution was apparently not formally introduced in evidence at the hearing before the board. But Section 1-9 of the Illinois Election Code (Ill. Rev. Stats., Chap. 24, Sec. 1-9) provides that: "* * * the several courts in this state shall take judicial notice of the population of any municipality, as the population appears from the latest Federal, State, or municipal census so taken."

In the proceedings before the electoral board there appears to have been some confusion as to the applicable statute governing determination of the population. The record shows that the chairman read from the Cities and Villages Act of 1872 which contained the provision that "any city or village may 'by ordinance' provide for the taking of a census of the population," which remained in the statute until 1941, when the section was amended by eliminating the quoted words. Hence, the applicable statute, at the time the board conducted its proceedings, did not require determination of population by ordinance. That statute reads: "Whenever in this Act any provision thereof is based upon the number of inhabitants, the number of inhabitants of the municipality shall be determined by reference to the latest census taken by authority of the United States or this State, or of that municipality. It is the duty of the secretary of state, upon the publication of any State or United States census, to certify to each municipality the number of inhabitants, as shown by that census. And the several courts in this state shall

take judicial notice of the population of any municipality, as the population appears from the latest Federal, State, or municipal census so taken." Chapter 24 Ill. Rev. Stat., Section 1-9. Hence there was, at the time the resolution fixing the population was adopted August 11, 1942, no requirement that the trustees' action be by enactment of ordinance. The legislature, by deleting the requirement, clearly evinced an intent to do away with it and to permit the board of trustees to act, as it did, by resolution. Where the mode of exercise of municipal power is not prescribed in the statute conferring the power or in some other statute, the power may be exercised by resolution as well as by ordinance. *Mound City* v. *Mason*, 262 Ill. 392, 395; *C. & N. P. R. R. Co.* v. *Chicago*, 174 Ill. 439, 445; *Village of London Mills* v. *Fairview-London Tel. Circuit*, 105 Ill. App. 146, 149, aff. in 208 Ill. 289, 296; *City of Quincy* v. *C. B. & Q. R. Co.*, 92 Ill. 21; *City of Alton* v. *Mulledy, et al.*, 21 Ill. 76, 78; 43 C. J. 250. If courts must take judicial notice of the latest municipal census, we fail to see how it can reasonably be urged that the board acted illegally or arbitrarily when it took similar notice and expressly found the population to be in excess of 5000. Indeed legislative or administrative notice is much wider than judicial notice. 23 C. J. 58. White and Hoffman surely knew of the village census, for they were village officers participating in the adoption of the resolution certifying it, and White attested it. Furthermore, under the express terms of the statute, the Superior Court was bound to take judicial notice of the village census and hence could make no proper finding other than that the village population was in excess of 5000.

Following affirmance of White's conviction by the Appellate Court, the Illinois Supreme Court denied leave to appeal; the United States Supreme Court denied certiorari; the Illinois Supreme Court denied leave to file a petition for a writ of habeas corpus; a petition for a writ in the nature of a writ of error *coram nobis* was dismissed by the Superior Court of Cook County; and a petition for a writ of habeas corpus was dismissed by the Circuit Court of Cook County.

It is entirely clear on the record that the two essential questions upon which the Superior Court's jurisdiction to review the board's decision entirely depended, were, first, was the board legally constituted; and second,

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if so, was its decision arbitrary. If the first inquiry is properly answered in the affirmative and the second in the negative, the board's decision was final and there was left no legal foundation whatever for court interference. That the first question must be answered in the affirmative is clear from the fact that the Superior Court eventually found that White was clerk, for, that being so, the board, admittedly was legally constituted. That the second inquiry must be answered in the negative is obvious from what we have said, for the board, bound to take notice of the latest village census, with jurisdiction of the parties, rightfully determined the population and held, as night follows day, that the candidates were not legally nominated by a caucus. Such is the mandate of the statute. Consequently, inasmuch as the board was legally constituted, and as its determination was based upon an incontrovertible fact, its decision was, under the statutes and the decisions of Illinois, one with which no court had authority to interfere.

We are fully aware of the rule that if a court's jurisdiction of the subject matter is dependent upon certain facts necessarily precedent to its authority to act, and the court makes findings of fact supported by evidence showing that the conditions have been met, the resulting judgment is binding upon the parties in a habeas corpus proceeding, even though the findings as to jurisdiction are erroneous. But there is a further well established rule properly applicable to the case at bar. If the facts essential to authority to act are wholly lacking or if the finding, on the face of the record, is irreconcilable with the conclusion that the conditions precedent to existence of the court's authority to act have been met, then the power of the court to proceed to judgment never comes into being, because of lack of proof of the essential conditions. This rule prevails where the want of jurisdiction appears upon the face of the record, or where the record affirmatively shows absence of proof of conditions necessary to give the court authority to exert its authority. 31 Am. Jur. Sec. 604, p. 200, citing cases. So, a recital in a judgment of the presence of a jurisdictional fact may be impeached by a positive contrary showing by the remainder of the record upon which the judgment is based. 31 Am. Jur. Sec. 605 and Sec. 421, citing cases. A fortiori, where it appears from the face of the record that the court did not have

power to act, there is nothing to preclude inquiry into the facts or to prevent declaration of the invalidity of the judgment. 31 Am. Jur. Sec. 426, p. 88 and cases cited.

Examining the Illinois authorities, we find that in *Forrest* v. *Fey, et al.* 218 Ill. 165 at 169 the court said: "In the absence of jurisdiction to pronounce a decree (the judgment) is absolutely void, and may be attacked either directly or collaterally. * * * if there is an affirmative showing in the record that there was no jurisdiction the judgment or decree will be void." See also *Osgood* v. *Blackmore*, 59 Ill. 261; *Sharp* v. *Sharp*, 333 Ill. 267. And, in *Way* v. *Way*, 64 Ill. 406 at 408, the court announced: "The question of jurisdiction, then, became one of fact, to be determined upon the hearing. * * * When the want of jurisdiction clearly appeared during the progress of the trial, it was the right and duty of the court, under the pleadings, to have dismissed the bill." This decision was approved in the later case, *Becklenberg* v. *Becklenberg*, 232 Ill. 120.

An enlightening case is *People* v. *Shurtleff*, 355 Ill. 210. There, respondent, a Circuit Judge, had, on an application for a writ of habeas corpus, discharged a prisoner from imprisonment. The Attorney General sought mandamus in the Supreme Court directing respondent to expunge the discharge order on the ground that the court was without power to issue it. The Supreme Court said: "The primary question in this case is the existence or non-existence of jurisdiction in the respondent to enter the order discharging Sammons. Jurisdiction of a tribunal does not depend upon actual facts alleged but upon authority to determine the existence or non-existence of such facts and to render judgment according to its finding. (*People* v. *Superior Court, supra.*) *If it develops in the course of a proceeding that the court does not have jurisdiction in the particular case, any order except one dismissing the proceeding is void.*" (Italics supplied.) "* * * Whenever the want of jurisdiction becomes apparent the proceedings thereafter are absolute nullities, * * *. Although the court had jurisdiction in the first instance to entertain the application for the writ, it follows that the rule is subject to the limitation that if in a particular proceeding it appears at any time that the court did not have jurisdiction, no order but one dismissing the petition can be entered."

"*A finding by a court that it has jurisdiction in a case*

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*is always overcome when the finding is irreconcilable with the facts disclosed by the record.* (Italics supplied.) In such a case the record impeaches itself, as it did in the case of *People* v. *Kelly, supra.* It has never been held, where the record itself shows that the evidence of jurisdiction upon which the court acted was insufficient, that its finding in favor of jurisdiction was conclusive. (*Senichka* v. *Lowe,* 74 Ill. 274.) It would be absurd to say that such finding was conclusive when the very record shows that the finding itself was void for want of jurisdiction. (*Goudy* v. *Hall,* 30 Ill. 109.) The return in this case and the answer and traverse showed a lack of jurisdiction. According to an unbroken line of authorities the respondent was rendered powerless to proceed further except to dismiss the petition, and the order of discharge was null and void." In *Bilokumsky* v. *Tod,* 263 U. S. 149 at 153, the court said: "It is also true that if the Department makes a finding of an essential fact which is unsupported by evidence, the court may intervene by the writ of habeas corpus. *Zakonaite* v. *Wolf,* 226 U. S. 272, 274-5." See also *Ng Fung Ho* v. *White,* 259 U. S. 276 at 284.

So, in this case, the mandamus petition rested on the premise that the board was illegally constituted. This gave the court jurisdiction to entertain the petition. Legality of the constituency of the board then became a jurisdictional fact. Once it appeared that the board was legally constituted, the court no longer had jurisdiction to proceed, and any order other than one dismissing the petition was absolutely void. The Illinois cases make it clear that the actions of an electoral board are subject to judicial review only under limited circumstances. If the record shows that such circumstances do not exist, then any attempt to control judicially the board's actions is not mere error "in the exercise of the court's jurisdiction" but an exercise of authority without right.

The record is absolutely devoid of any evidence that there was any defect in the organization of the Board or that the population of the village was less than 5000. Evidence of at least one of these alleged defects was essential before the court had any authority to interfere. When the Superior Court entered the judgment in mandamus it made no finding whatever as to whether White was clerk; yet a finding that he was not clerk was a condition prece-

dent to the court's authority to act, for if he was clerk, then the board was organized in compliance with the provisions of the statute and its decision upon evidence, under the express terms of the statute, final. Thus the record in the proceeding in mandamus in the Superior Court contained no evidence that the court had jurisdiction to interfere with the order of the board. Not only that but, when the relator failed to comply with the order and came before the court on an order to show cause why he should not be adjudged in contempt, the undisputed proof and the finding of the court was that White was then and had been at all times village clerk and the court expressly so found. This was complete, direct and explicit proof of record that the court was without jurisdiction to enter the mandamus order, for that order was granted solely upon the postulate that the board was not legally constituted and yet, before the order in mandamus was appealed and before White was adjudged in contempt, the court expressly found the facts, showing not that it had jurisdiction but in fact that it had no power to act, except to dismiss the petition. This is not a case where a finding, based on evidence that the court had jurisdiction, even though erroneous, must stand, but one where, on the face of the record, the court itself found the facts to be such that never at any time did the court have power to act in the litigation.

We would have no hesitancy in deciding that the District Court was without jurisdiction if it were clear in the record that there was substantial evidence to support a finding, first that the Board was illegally organized (i. e., that White was not in fact Clerk of the Village) or the further conclusion that the decision of the Board was arbitrary or unreasonable (i. e., in deciding that the population of the village exceeded 5000, for in such a situation, the court having found from evidence the facts essential to its jurisdiction upon substantial evidence, the only remedy of the defendant would lie in the ordinary method provided by the state law for review of the court's decision. But we cannot escape the fatal defect of a decision wholly lacking in evidence essential to jurisdiction or authority to act.

There is no evidence whatever in this record, substantial or otherwise, of arbitrary action by the board. Its conclusion that the population of the village exceeded

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5000 was a finding based upon undisputed evidence and, hence, could not be said to be arbitrary, for the village census, of which under the statutes of Illinois all courts must take judicial notice, discloses that the factual conclusion of the Board was correct and indisputable. So the power of the court to act having been questioned and it being clear under the statute of the state that it was without power to proceed in the absence of proof of the two facts, that is, the nonclerkship of White and a population of less than 5000, and there being no evidence whatsoever to support either of these conditions precedent to the authority of the court to act, the judgment of the court was, under the statutes of Illinois, void and of no avail, and hence in violation of the due process clause of the constitution.

Appellant contends that the District Court was without jurisdiction to consider the habeas corpus petition because the relator has not exhausted state remedies in that he did not, (1), invoke review of the coram nobis proceedings or, (2), file a petition for certiorari in the United States Supreme Court to review the dismissal of the habeas corpus proceeding. We are not unmindful of the oft quoted rule of *Ex Parte Hawk*, 321 U. S. 114, to the effect that a federal court will not ordinarily entertain a habeas corpus petition filed by a state prisoner unless and until state remedies have been exhausted. But it has always been recognized that the rule is not absolute. "It is the delicacy of the jurisdiction rather than the jurisdiction itself which has led the Federal Courts to insist that the State Courts should be given ample opportunity to deal with the question before the Federal Court attempts to exercise its jurisdictional power." *Dooly* v. *Mahoney*, 42 F. Supp. 890, 892. In the *Hawk* case the Supreme Court recognized that the federal courts may, in "exceptional" cases entertain a habeas corpus petition even though, technically, state remedies have not been exhausted, saying: "where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy, see *Mooney* v. *Holohan, supra*, 115, or because in the particular case the remedy afforded by state law proves in practice *unavailable* or seriously *inadequate*. (Italics supplied.) cf. *Moore* v. *Dempsey*, 261 U. S. 86; *Ex Parte Davis*, 318 U. S. 412, a federal court should enter-

tain his petition for habeas corpus, else he would be remediless. In such a case he should proceed in the federal district court before resorting to this court by petition for habeas corpus."

As to relator's failure to pursue the remedy in the nature of *coram nobis*, we think it clear, under the Illinois authorities, that that remedy is not available. The Illinois statutory motion in the nature of a writ of error *coram nobis* is available only to present factual questions which were not known to the trial court, which do not conflict with the Jury findings, and which the prisoner failed to raise because of excusable mistake on his part. *People* v. *Rave*, 392 Ill. 435. If the errors relied upon were a matter of record, or were before the court at the time of trial, *coram nobis* does not lie. *Jerome* v. *Quincy Street Building Corp.*, 385 Ill. 524. In *People* v. *Touhy*, 397 Ill. 19, the court said: "The purpose of the writ of error *coram nobis* at common law, and of the motion substituted for it by section 72, is to bring before the court rendering the judgment *matters of fact not appearing of record, which, if known at the time the judgment was rendered, would have* prevented its rendition (citing cases)." Other decisions to the same effect are *Chapman* v. *North American Insurance Co.*, 292 Ill. 179; *Linehan* v. *Travelers Ins. Co.*, 370 Ill. 157; *Cramer* v. *Ill. Com. Men's Association*, 260 Ill. 516; *People* v. *Schuedter*, 336 Ill. 244; *Marabia* v. *The Mary Thompson Hospital of Chicago*, 309 Ill. 147. Here it is not suggested that any fact affecting the judgment existed, which was not known to the Superior Court. Any mistakes made by that court were in law and not in facts unknown to the court, which if known, would have prevented rendition of the judgment. Hence, under the cited Illinois decisions, the remedy in the nature of *coram nobis* is not available to the relator.

We have remaining the question of the effect of the relator's failure to seek certiorari in the Supreme Court of the United States in the state habeas corpus proceedings. We pass without decision the suggestion that the present case must properly be considered "exceptional" and other remedies "inadequate"; that relator has been unable to obtain relief in the state courts; that, inasmuch as he was sentenced to serve six months in jail, if he should be required to continue seeking other remedies,

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not remote is the probability that he will have been forced to serve his entire sentence before he can present his question to a federal court and that, in such case, his plea will have become moot before it can be heard. For other sufficient reasons, we think, it was clearly within the "sound discretion" of the District Court to take jurisdiction. Thus in *U. S.* v. *Tyler*, 269 U. S. 13, the court said: "The power conferred on a federal court to issue a writ of habeas corpus to inquire into the cause of the detention of any person asserting that he is being held in custody by the authority of a state court in violation of the Constitution, laws or treaties of the United States, is not unqualified, but is to be exerted in the exercise of a sound discretion." In *Moore* v. *Dempsey*, 261 U. S. 86, the court approved the action of the District Court in taking jurisdiction, saying: "We shall not say more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void." In the more recent case, *Wade* v. *Mayo*, 334 U. S. 672, where the relator had failed to seek certiorari from the state court's denial of habeas corpus, the Supreme Court refused to set any rigid rule in these words: "In short, we refuse to codify the failure to invoke the discretionary certiorari powers of this court into an absolute denial of the district court's power to entertain a habeas corpus application. The prevention of undue restraints on liberty is more important than mechanical and unrealistic administration of the federal courts." See also the opinions of this court in *Potter* v. *Dowd*, 146 F. 2d 244 and *Spence* v. *Dowd*, 145 F. 2d 451 (CA7). In short, irrespective of whether the present case is one within those recognizing unusual or exceptional circumstances or inadequacy of any further resort to state remedies, such as *Jones* v. *Commonwealth of Kentucky*, 97 F. 2d 335 (CA6); *In re Neagle*, 135 U. S. 1; *In re Loney*, 134 U. S. 372; *Wildenhus'* case, 120 U. S. 1; *Marsino* v. *Hogsett*, 37 F. 2d 409; *Moore* v. *Dempsey*, 261 U. S. 86 and *Wade* v. *Mayo*, *supra*, remembering the latest announcement of the Supreme Court in the *Wade* case, we cannot say that the District Court abused its "sound discretion" in assuming jurisdiction.

We conclude that there was never any legal basis for

ordering dissolution of the electoral board; that the board was legally constituted; that its members were under the statutory duty to proceed to hearing and to record the vote of the board; that, since the board was legally constituted and did not act illegally, fraudulently or arbitrarily the Superior Court had no jurisdiction to review its action; that the mandamus and contempt orders of the Superior Court were void for want of authority to act, and that relator's imprisonment as a result of those void orders is in violation of the due process clause of the Fourteenth Amendment.

Whether candidates are to be given places on ballots is to be determined from the statutes of the state. If the complaining candidates felt that they should have been placed on the ballot, they should have proceeded as the legislature has provided for villages having populations in excess of 5000. If they desire to have the law changed, their remedy lies in an appeal to the state legislative bodies; not in recourse to a court which has no jurisdiction to alter legislative acts or to disturb valid administrative orders. As long as the board acted within its statutory authority, it was a violation of White's constitutional rights to imprison him for performing his statutory duty.

The judgment is affirmed.

KERNER, *J., dissenting.* The Superior Court of Cook County, Illinois, is a court of record. It has jurisdiction of all causes in law and equity. Mandamus is such a cause. Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit. After a court has acquired jurisdiction its findings are conclusive in all collateral proceedings. If the law confers the power to render a judgment or decree, then the court has jurisdiction. Jurisdiction, however, does not depend upon the decision of the case, and if the complaint presents questions of a character giving a party the right to invoke the judgment of a court, jurisdiction should be entertained.

In this case a petition for mandamus was filed in a court having jurisdiction to render judgment upon the rights of the parties. If the relators were legally entitled to have their names placed upon the ballot, then that was a right the court could enforce by mandamus. *People ex*

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*rel. Powell* v. *Hartley*, 170 Ill. 370. White, the defendant named in the petition, filed an answer, thus the court had jurisdiction of the subject matter as well as of the parties. The cause was tried. The court found that the action of the Electoral Board was an abuse of power and so arbitrary as to amount to fraud, and entered a judgment that the mandamus writ issue. Whether the allegations of the petition for mandamus, or the proofs to sustain them, were true or false, or that the court may have been mistaken in the facts, or may have misconceived the law, did not affect the validity of the judgment, and the judgment, whether right or wrong, was valid and binding until set aside by proper proceedings. White appealed to the appellate court of Illinois. That court affirmed and in its decision said: "* * *, assuming that the decision had been made by a legally constituted board, we are still of the opinion that the superior court had jurisdiction to review by mandamus the action of a board which was so clearly an abuse of power and so arbitrary as to amount to fraud. * * * The only evidence adduced before the board was that the Federal census showed the population of the village to be 4,960, and in the absence of any countervailing proof that a State or municipal census taken since 1940 disclosed the population to be in excess of 5,000, the electoral board was bound by that evidence and had no alternative except to allow the nomination papers of the relators to be filed. * * * The right of courts to review by mandamus the acts of public officers where they have acted arbitrarily or in abuse of discretion is well settled by numerous decisions in this State holding that if a discretionary power is exercised with manifest injustice, the courts are not precluded from commanding its due exercise, and as stated in *Illinois State Board of Dental Examiners* v. *People ex rel. Cooper*, 123 Ill. 227, 'they will interfere, where it is clearly shown, that the discretion is abused. Such abuse of discretion will be controlled by *mandamus.*' " *People ex rel. Martin* v. *White*, 329 Ill. App. 81, 92.

White, still claiming error, filed a petition in the Supreme Court of Illinois for leave to appeal. The petition was denied, 331 Ill. App. XIV, and thereafter the United States Supreme Court denied his petition for certiorari, 330 U. S. 842.

Although the majority opinion concedes that "if the

board * * * acted arbitrarily or fraudulently" its actions are subject to judicial review, it affirms the District Court on the ground that the Superior Court and the Appellate Court erred in holding that the action of the Board was an abuse of power and so arbitrary as to amount to fraud, —in other words, that the judgment was wrong. However, it goes further and determines that, contrary to other erroneous judgments the error of which can be corrected only by appeal, here the error was such as to render the judgment void. But the trial was before a court having jurisdiction of the person and subject matter. The trial was conducted according to the legal and usual method of procedure and the judgment rendered was the result of due process. In this situation, I cannot agree that the judgment was so vulnerable as to render it subject to collateral attack. Even if it is assumed that the judgment was wrong, a want of due process is not established by showing merely that the decision is erroneous. *Vajtauer* v. *Commissioner*, 273 U. S. 103, 106.

Under the circumstances here appearing, it seems to me that my colleagues are permitting White to use the habeas corpus writ as a substitute for an appeal. They are reviewing not only the judgment of the Superior Court, but the decision of the Appellate Court of Illinois. They have permitted the trial of the mandamus proceeding to go for naught and have allowed the District Court to try the case *de novo*. But the District Judge has no such jurisdiction and he was not at liberty to say that the Illinois courts improperly interpreted the laws of Illinois and then set up his own interpretation as a basis for declaring that due process has been denied. *Gryger* v. *Burke*, 334 U. S. 728, 731. The District Court does not sit to review errors which a state court may make in the administration of its own remedies, if those remedies give due process. *Collins* v. *Johnston*, 237 U. S. 502.

And on the same day, to-wit, on the twentieth day of April, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

April 20, 1949.

Before:

Hon. J. Earl Major, Chief Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

| | |
|---|---|
| United States of America, *ex rel.* Ralph E. White, *Petitioner-Appellee,* vs. Elmer Michael Walsh, Sheriff of Cook County, Illinois, *Respondent-Appellant.* | Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division. |
| No. 9635. | |

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, With Costs.

And afterward, to-wit, on the eighteenth day of May, 1949, there was filed in the office of the Clerk of this Court, a designation of record, which said designation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

---

No. 9635.

The United States of America, *ex rel.*, Ralph E. White, *Appellee*,
*vs.*
Elmer Michael Walsh, Sheriff of Cook County, Illinois, *Appellant.*

## APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON PETITION FOR CERTIORARI.

Appellant, Elmer Michael Walsh, Sheriff of Cook County Illinois, hereby designates the following portion of the record and proceedings to be included in the record on Petition for Certiorari to the United States Supreme Court:

1. Recitation of the filing of Transcript.
2. The Transcript of the District Court Record.
3. Appearance for appellant.
4. Appearance for appellee.
5. Order taking case under advisement.
6. Opinion of the Court.
7. Judgment.
8. Designation of Transcript of Record.
9. Certificate of Clerk.

John S. Boyle,
*State's Attorney of Cook County,*
*Attorney for Appellant.*

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**Proof of Service.**

Received a true and exact copy of the above and foregoing Appellant's Designation of Contents of Record on Petition for Certiorari to United States Supreme Court, this 17th day of May, A. D. 1949.

(Sgd.) Joseph I. Bulger,
(Sgd.) Ode L. Rankin,
*Attorneys for Appellee.*

Endorsed: Filed May 19, 1949. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

**For the Seventh Circuit.**

**No. 9635.**

The United States of America,
*ex rel.*, Ralph E. White,
*Appellee,*
*vs.*
Elmer Michael Walsh, Sheriff of
Cook County, Illinois,
*Appellant.*

NOTICE.

To: Joseph I. Bulger, Esq.,
Ode L. Rankin, Esq.,
139 N. Clark Street, Suite 1804,
Chicago 2, Illinois,
*Attorneys for Appellee.*

Please take notice that we shall file with the Clerk of the United States Court of Appeals for the Seventh District the attached Designation of Record for use on Petition for Certiorari in the United States Supreme Court on May 17, 1949.

John I. Boyle,
*State's Attorney of Cook County,*
*Attorney for Appellant.*

Received a true and exact copy of the above and foregoing Notice of filing Designation of Contents of Record on Petition for Certiorari to the United States Supreme Court this 17th day of May, A. D. 1948.

(Sgd.) Joseph I. Bulger,
(Sgd.) Ode L. Rankin,
*Attorneys for Appellee.*

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

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I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of papers filed and proceedings had, made in accordance with the designation of record filed on May 18, 1949, in:

Cause No. 9635.

United States of America, ex rel. Ralph E. White,
*Petitioner-Appellee,*

*vs.*

Elmer Michael Walsh, Sheriff of Cook County, Illinois,
*Respondent-Appellant,*

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of May, A. D. 1949.

Kenneth J. Carrick,
*Clerk of the United States Court of Appeals for the Seventh Circuit.*

(Seal)

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1949

No. 199

ELMER MICHAEL WALSH, SHERIFF, COOK COUNTY, ILLINOIS,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA, ex rel RALPH E. WHITE,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.**

JOHN S. BOYLE,
State's Attorney of Cook County, Illinois,
*Attorney for Petitioner.*

JOHN T. GALLAGHER,
JAMES V. CUNNINGHAM,
PETER G. KUH,
Assistant State's Attorneys,
*Of Counsel.*

CHAMPLIN-SHEALY COMPANY, CHICAGO 363

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1949

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No.

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ELMER MICHAEL WALSH, SHERIFF, COOK COUNTY, ILLINOIS,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA, ex rel RALPH E. WHITE,

*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Elmer M. Walsh, Sheriff, Cook County, Illinois, Petitioner, by John S. Boyle, State's Attorney of Cook County, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above entitled cause on April 20, 1949.

## Record and Opinion Below.

This cause was heard in both the District Court and the Court of Appeals. The District Court stated its opinion (R. 384-394). The opinion of the Court of Appeals, delivered by a divided court is reported at 174 F. 2d 49 (R. 426-444).

## Jurisdiction.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on April 20, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. Secs. 1254, 2101.

## Summary Statement.

The petitioner below, here the respondent-appellee, was held in contempt by the Superior Court of Cook County, Illinois on June 1, 1945, after he had failed to comply with a mandamus order originating in the same court. The mandamus order was one to compel White to put on the ballot of the Municipal Election to be held in Lyons, Illinois on April 17, 1949, the Regular Peoples Party. The order was entered after a hearing and a finding by the Superior Court that it had jurisdiction of the parties and the subject matter, and a finding of the issues in favor of the petitioners for mandamus. After respondent in the mandamus action refused to comply with order therein a contempt judgment was entered on May 31, 1945. Appeal was taken from this order to the Appellate Court of Illinois, First District, which affirmed the lower court's judgment (R. 317-327, 342-343) reported at 329 Ill. App. 81 and 94. Thereafter the Illinois Supreme Court denied leave to appeal and the United States Supreme Court denied applications for certiorari (R. 11, 347).

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Subsequently a writ of habeas corpus was sued out in the Circuit Court of Cook County which was subsequently quashed and a writ of habeas corpus or, in the alternative a motion for a writ of mandamus to expunge the mandamus judgment of the Superior Court of Cook County was denied by the Supreme Court of Illinois (R. 12). A motion in the nature of a writ of error coram nobis was then filed in the Superior Court of Cook County and it was denied on December 19, 1947 (R. 13). No appeal was taken by petitioner-appellee from either the habeas corpus proceeding in the Circuit Court of Cook County or the Supreme Court of Illinois, or from the Superior Court motion in the nature of a writ of error coram nobis. On the same day as the denial of the writ of error coram nobis this proceeding for habeas corpus was initiated by the petitioner-appellee in the United States District Court, said writ being based generally on the grounds that petitioner was being illegally detained in violation of the requirements of due process of law embodied in the Fifth and Fourteenth Amendments to the United States Constitution.

In his petition for habeas corpus appellee stated that he was duly elected, qualified and acting Village Clerk of the Village of Lyons, Illinois, that the Superior Court had no jurisdiction to pass on the issues therein presented in the mandamus proceeding, that the mandamus proceeding was an interference by the judiciary with the Executive branch of the State Government. He further alleged that a census had been adopted by resolution in the Village of Lyons showing the population of the Village to be over 5,000. All of the above contentions except the last had been passed upon and denied in the hearing on the mandamus petition. The last was a piece of evidence which was never presented before the State Courts except in the motion in the nature of a writ of error coram nobis, where it had been passed on and denied.

A hearing was held by the District Court on the petition, which after re-opening the case and permitting new evidence to be admitted found for the petitioner. The United States Court of Appeals for the Seventh Circuit affirmed the District Court by a 2-1 decision.

## Questions Presented.

1. Whether a United States District Court has jurisdiction to entertain a Petition for a Writ of Habeas Corpus, or to try the issues tendered thereby where the relator waived his right to try these issues in the State Court by the manner of appeal taken; where certiorari was denied by the United States Supreme Court; where the only questions involved were matters of interpretation of state law; where the relator failed to raise any Federal question in State Court proceedings; where State Court remedies were not exhausted; and where evidence is offered which was not adduced at the original trial?

2. Whether the District Court could properly rule that neither the Circuit nor Superior Courts of Cook County, nor the Appellate Court of Illinois had jurisdiction when these courts had passed on the question?

## Constitutional Provision Involved.

"Nor shall any state deprive any person of life, liberty or property without due process of law" U. S. Const., Amendment XIV, Section 1.

## Statement.

Petitioner-appellee was the elected Village Clerk of the Village of Lyons, Illinois. He gave notice as required by statute of the election to be conducted in that village on

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April 17, 1945. Certificates of nomination of two parties, the Regular Peoples Party and the Regular Progressive Citizens Ticket were filed with him. Candidates of both parties had been nominated by caucus, a method of nomination permitted by statute in Illinois in communities whose population is under 5,000. Objections were filed to the nominating papers of the Regular Peoples Party on the ground the village population exceeded 5,000 inhabitants. A Municipal Elections Board, headed by County Judge Jarecki was called to consider the objections. The only evidence presented to the Board was the Federal Census of 1940 showing the population of Lyons to be 4,960. One member of the Board made some reference to OPA figures showing the population to be over 5,000 but there was no further evidence on this point. The day after the meeting of the Board a petition for mandamus was filed in the Circuit Court of Cook County by the Regular Peoples Party against the Chairman of the Election Board stating that under Illinois Statutes the Board lacked jurisdiction, the Board had never served the relator with the objections as required by Illinois Statute, and that White was not in fact the Village Clerk of Lyons, since he had resigned and become Chief of Police of the Village. Mandamus issued, but there was not contempt proceedings following the order since White and another member of the Board had not been personally served. The Regular Peoples Party then filed a petition for a writ of mandamus in the Superior Court of Cook County, wherein personal service was secured on White. Defendants in that suit filed a motion to strike the petition which was denied. White was ordered after a hearing to print ballots and include the Regular Peoples Party thereon. When White failed to obey the order of the Court he was held in contempt and sentenced to six (6) months in the County Jail. Appeal was taken from this

decision to the Appellate Court of Illinois. It is a long standing rule in Illinois that Constitutional questions may be decided only by the Supreme Court of this state, and an appeal to the intermediate Appellate Court waives such questions. Further proceedings were as set out above in the Summary Statement.

**Reasons for Granting the Writ.**

***The District Court lacked jurisdiction to entertain the Petition for the writ of Habeas Corpus, or to try the issues tendered thereby, or to make the writ absolute and discharge the relator.***

The United States Supreme Court in *Parker* v. *People of the State of Illinois*, 92 L. Ed 685 held that one who waived a constitutional question according to state practice by taking an appeal from a contempt order to an intermediate court, without jurisdiction to pass upon constitutional questions, upon assignments of error which included matters of which such court had jurisdiction, was foreclosed from a consideration of the questions of constitutionality by the State Court of last resort and may not seek review of the constitutional question by the Supreme Court of the United States. This reasoning of this Court should apply with equal force to the jurisdiction of the Federal District Court to grant a trial de novo on a constitutional issue waived by this method in the State Court wherein additional evidence was admitted in a habeas corpus proceeding.

***Though denial of certiorari in the instant case was not a finding on the merits it made the Appellate Court of Illinois decision the law of the case.***

The Supreme Court of the United States refused certiorari on the appeal of petitioner-appellee here from the decision of the Appellate Court of Illinois upholding the

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contempt judgment. This Court has repeatedly stated that denial of certiorari is not a decision on the merits, but a recent District Court Opinion where an attempt was made to obtain habeas corpus in the District Court after certiorari had been denied to a State Court conviction, held that the denial of certiorari established the lower court decision as the law of the case. *Ex Parte Danziger*, 77 F. Supp. 466 (D. C. S. D. Cal., 1948).

If the present granting of the writ of habeas corpus is allowed to stand, denial of certiorari by this Court would appear to be an invitation to a reopening of the entire proceeding and the taking of additional evidence on a habeas corpus proceeding in a Federal Court.

*There was no Federal Question raised in either the State Courts or the Federal District Court.*

The only question before the Municipal Election Board was one of fact, namely the population of the Village of Lyons. The questions before the Superior Court were whether the Election Board was lawfully constituted which was again one of fact and construction of the laws of Illinois, and whether the action of the Electoral Board was so arbitrary as to amount to a fraud.

There is nothing in the District or Circuit Court opinions which indicates that this case may not have been decided on an independent state ground. Such a showing must be affirmatively made to invoke the jurisdiction of the Federal Courts.

*White* v. *Ragen*, 324 U. S. 760.

This court has repeatedly held that questions arising out of state elections are matters not within the protection of the Fourteenth Amendment to the Federal Constitution, as pointed out in *Snowden* v. *Hughes*, 321 U. S. 1, 6, 7, 11, and 12.

*Petitioner-Appelleee has not exhausted his remedies in the State Courts.*

Petitioner-appellee filed a writ of habeas corpus in the Circuit Court of Cook County and later in the Supreme Court of Illinois; no appeal was taken from the dismissal of either of these writs. The same is true of the dismissal of the writ of error coram nobis in the Cook County Courts. State remedies must be exhausted before habeas corpus can be sought in the Federal Courts. *Ex parte Hawk*, 321 U. S. 114.

**Conclusion.**

It is respectfully submitted that the District Court erred in entertaining the petition for the Writ of Habeas Corpus and that the United States Court of Appeals erred in sustaining the granting of the writ. Therefore, for the reasons above given we believe that sound legal principles require that the petitioner-appellee be remanded to the custody of the respondent-appellant and that the judgment of the United States Court of Appeals for the Seventh Circuit be reversed.

Respectfully submitted,

JOHN S. BOYLE,
State's Attorney,
*Attorney for the Petitioner.*

JOHN T. GALLAGHER,
JAMES V. CUNNINGHAM,
PETER G. KUH,
Assistant State's Attorneys,
*Of Counsel.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

## No. 199

ELMER MICHAEL WALSH, Sheriff of Cook County, Illinois,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA, Ex Rel, RALPH E. WHITE,

*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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139 North Clark Street,
Chicago, Illinois,
*Attorneys for Respondent.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

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## No.

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ELMER MICHAEL WALSH, Sheriff of Cook County, Illinois,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA, Ex Rel, RALPH E. WHITE,

*Respondent.*

---

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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### STATEMENT.

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The District Court when first applied to for the Writ of Habeas Corpus did not issue the writ instanter, *pro forma,* but held a preliminary hearing and went into the merits of the whole matter. Convinced that the record

warranted judicial action the writ was issued, and relator brought before the Court. Upon a full hearing, relator was discharged.

On appeal by the sheriff the judgment was affirmed. Honorable Otto Kerner dissented. The majority opinion was written by the learned District Judge, Walter C. Lindley, Honorable J. Earl Maor, concurring.

The facts of the case appear in the Finding of Facts of the District Judge, Honorable Michael L. Igoe (Tr. 304), and in the majority opinion of the Court of Appeals (Tr. 426), (174 Fed. 2d 49).

The relator Ralph E. White was clerk of the Village of Lyons and arranged the tickets on the ballot for the annual election pursuant to an order of the Municipal Electoral Board.

The order had been entered in a hearing on objections to a ticket, in which hearing the Board had final and exclusive statutory jurisdiction.

In a petition for mandamus to compel relator as clerk to put on the ballot the ticket which the Municipal Electoral Board had ordered off, it was defended that the Court was without jurisdiction to interfere with the affairs of another department of government, which had exclusive jurisdiction.

The Court ordered the ticket on the ballot. The relator, caught between two fires, elected to adhere to his statutory duty and did not obey. The Court adjudged relator in contempt and ordered him committed for six months.

Appeals were taken and prosecuted without avail to the end. Application was then made to the Supreme Court

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of Illinois for Habeas Corpus but that the Court refused to take jurisdiction.

A correct decision of the Habeas Corpus case required the taking of evidence and the Supreme Court of Illinois will not hear evidence in a habeas corpus matter.

Petition for Writ of Habeas Corpus was then filed in the District Court which, after a preliminary hearing, elected to take jurisdiction and on full hearing later discharged relator.

**Reasons for Denying the Writ of Certiorari.**

The sole question presented here is whether the District Court so far abused its discretion in exercising jurisdiction to grant the Writ of Habeas Corpus that its judgment, though just, must be reversed. If the District Court did not abuse its discretion all other questions raised melt away.

The record shows, and the majority opinion demonstrates that the respondent White was illegally imprisoned and awaited only a stroke of the judicial pen to open the prison door.

There could be, we assert, no abuse of discretion in the District Court if it issued a Writ of Habeas Corpus to free a United States citizen unjustly imprisoned.

Jurisdiction existed to issue the writ; the exercise of jurisdiction rested in discretion. When such discretion is exercised it is not a basis for appeal or allegation of error. The objection to its exercise then passes to the merits of the case.

The merits are not here, where, as appears from the petition herein, the only reason assigned for issuing of the

Writ of Ceriorari is that the District Court erred in taking jurisdiction to issue the Writ of Habeas Corpus because State remedies were not exhausted. But we suggest that the requirement of exhaustion of State remedies is a procedural requirement and passed out of consideration when the District Court in its discretion exercised jurisdiction notwithstanding the procedural rule.

The District Court was of opinion that relator had exhausted his remedies. (Opinion of Trial Judge Tr. 393). The thought is that where certiorari writs are discretionary which this Court, and the exercise of jurisdiction in Habeas Corpus cases is discretionary with the Supreme Court of Illinois the remedy is so far unpredictable and uncertain as to a hearing upon the merits that the relator might well turn to the United States District Court for relief as a procedural expediency without offending against the general rule as to exhaustion of remedies. The relief of this court from the great crush of business that now engulfs it would in any event suggest that this Court might well excuse itself from determining the question of certiorari and permit the District Courts to take over when State remedies had been exhausted. That thought we read between the lines in *Wade* v. *Mayo*, 334 U. S. 672, 680.

## BRIEF.

The exercise of discretion by the District Court to entertain a petition for Habeas Corpus is not a proper subject of review, being the exercise of an inherent procedural right of the Court. That State remedies should be exhausted before application to a United States Court for a Writ of Habeas Corpus, is not a jurisdiction requirement but a procedural rule which may be excused by the District Court in the exercise of sound discretion.

*Wade* v. *Mayo*, 334 U. S. 672.

## ARGUMENT.

If the record conditions were reversed and the District Court had refused to take jurisdiction on the procedural ground that one State remedy yet remained for exhaustion, it could be urged that the District Court, in so doing, had abused discretion, or, on the other hand, that it was justified in not using jurisdiction to issue the writ. But once discretion had been exercised to hear the relator notwithstanding failure to pursue state remedies to the end there was no error, for the court was in the exercise of its inherent jurisdiction as of right, and the procedural question, was relegated to the background as of course.

We assume we need go no further than to suggest to the Court that in the recent case of *Wade* v. *Mayo*, 334 U. S. 672, where the relator had failed to seek certiorari from the State Court's denial of Habeas Corpus this Court refused to set any rigid rule in these words:

> "In short we refuse to codify the failure to invoke the discretionary powers of this Court into an absolute denial of the District Court's power to entertain a habeas corpus application. The prevention of undue restraints on liberty is more important than mechanical and unrealistic administration of the federal courts."

The learned Judge in his opinion filed in this case so expressed himself. (174 Fed. 2d, 4[illegible])

Here the District Court liberated a United States citizen held on void state process; and even if such action were an abuse of discretion, the fact that the judgment discharging relator was correct, obviates any error.

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The findings of fact of the District Court not being questioned, and the only reason assigned for granting the Writ of Certiorari, being an abuse of discretion in issuing the Habeas Corpus Writ, at a stage of proceedings when State remedies had not been exhausted, the problem solves itself. There is no basis for the Writ of Certiorari.

We respectfully suggest that the judgment of the District Court is just, the decision of the Court of Appeals is correct, and the Court of Appeals should be accordingly affirmed.

Respectfully submitted,

JOSEPH I. BULOS,
ODE L. RANKIN,
*Attorneys for Relator, Respondent here.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

## No. 199

ELMER MICHAEL WALSH, Sheriff of Cook County, Illinois,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA, Ex Rel, RALPH E. WHITE,

*Respondent.*

## PETITION FOR REHEARING.

JOSEPH L. BULGER,
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139 North Clark Street,
Chicago, Illinois,
*Attorneys for Respondent.*

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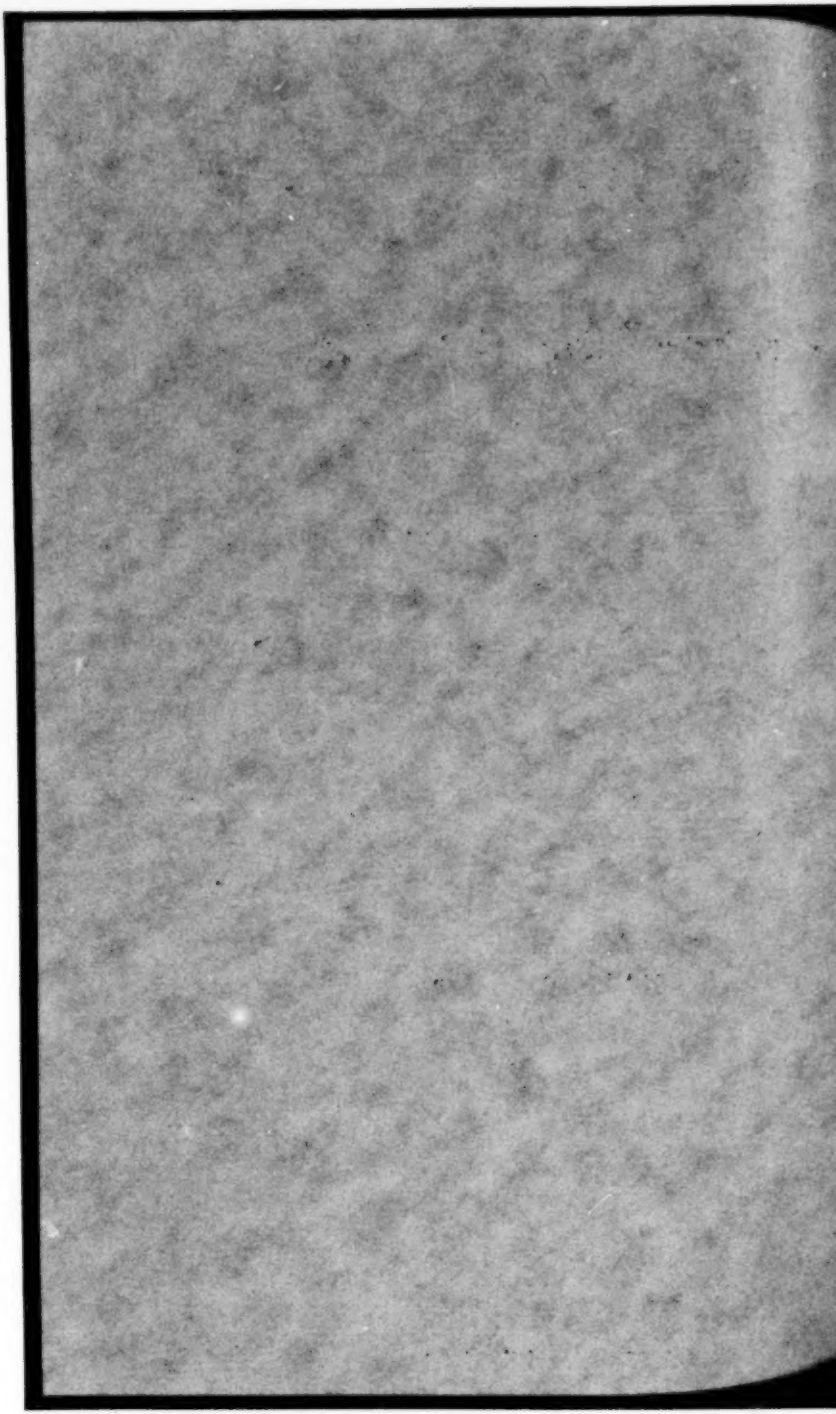

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

## No. 199

ELMER MICHAEL WALSH, Sheriff of Cook County, Illinois,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA, Ex Rel, RALPH E. WHITE,

*Respondent.*

## PETITION FOR REHEARING.

*To the Honorable Justices of the Supreme Court:*

Now comes Ralph E. White the relator and respondent in said cause and requests the court that it reconsider the record and its judgment order entered in this case and grant a rehearing of the cause and consider it upon its merits and for reasons suggests to the court as follows:

## I.

This court entered a per curiam order herein on October 10, 1949, as follows:

> "Per Curiam: The petition for writ of certiorari is granted. The judgment of the Court of Appeals is reversed and the cause is remanded to the District Court with directions to discharge the writ of habeas corpus and remand the respondent to custody."

Inasmuch as no ground is specified upon which the court based its order counsel must seek by elimination to find one to which to address this petition.

We assume naturally that the order was not entered upon any theory that the District Court was without jurisdiction to entertain a habeas corpus proceeding, as this court has always recognized the jurisdiction of the District Court to entertain the proceeding, and put the exercise of that jurisdiction in the sound discretion of the court.

The District Court made findings of fact (Tr. 394-407) which have not been attacked or overthrown; and the opinion of the District Court (Tr. 384-394) shows the great care and consideration given to the cause by the District Judge. The discretion exercised was upon a full hearing, argument, advisement and study.

The learned Judge who wrote the opinion in the Court of Appeals for the Seventh Circuit, Honorable Walter C. Lindley, demonstrates that the mandamus judgment of the Superior Court of Cook County was entered without jurisdiction and its order of imprisonment under that judgment was likewise void and the imprisonment of the relator White without legal right and in violation of basic constitutional rights.

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The action of this court must therefore be based upon some condition of the record which this court considers so obvious and fatal as to preclude reasonable argument.

**The discretion exercised by the District Court was not arbitrary.**

We respectfully suggest that looking at this cause in the light of the record and the judgments of the District Court, and the Court of Appeals it is obvious that the relator White stands before the court as a United States citizen unjustly held and imprisoned by a void judgment of an Illinois Court; so that where the State authorities insist upon a continuation of such imprisonment, it was within discretion to grant the writ and discharge the prisoner.

We therefore urge that if the judgment of the District Court was right then ultimate justice would say that any procedural error leading up to that judgment would not outweigh the justice of the final judgment, nor cause it to be reversed.

It was considered by the learned jurist who wrote the Opinion of the Court of Appeals that the case of *Wade* v. *Mayo*, 334 U. S. 674 had settled that question with the statement that this court would not construe a "failure to invoke the descretionary certiorari powers of this court into an absolute denial of the District Court's power to entertain a habeas corpus application" (P. 681).

We suggest that to adjudge otherwise would cause the relator to suffer imprisonment for procedural irregularities rather than for the offence.

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**White had exhausted his State remedies.**

*Wade* v. *Mayo* is also authority for the proposition that the exhaustion of one remedy is sufficient and that it is not necessary to exhaust a collateral remedy as a prerequisite to making an application to the District Court for habeas corpus relief. It is there said, "The exhaustion of but one of several available alternatives is all that is necessary." (P. 677) White appealed the judgment of the mandamus case and also the contempt judgment to the Appellate Court where both were affirmed. Petition for leave to appeal was filed in the Supreme Court of Illinois as to both cases and was denied, leaving the judgments as final in the Appellate Court. Certiorari was then sought in this court to review the judgments in the Appellate Court of Illinois which was denied. That was an exhaustion of remedies by direct attack.

We therefore suggest that even if it be considered that relator had not entirely and completely exhausted all State procedure a just judgment should not be overturned for the sake of a correct procedure.

**Relator did not waive his right to have due process of law.**

If it should be that this court regarded the case of *Parker* v. *People of the State of Illinois*, 92 Law Ed. 685 as a precedent controlling here there are two reasons why that case should not be so considered: (1) The question of whether one has been denied due process of law is not a construction of the constitution within the meaning of Section 75 of the Illinois Civil Practice Act (Chap. 110, Sec. 75 Ill. Rev. Stat.) which provides that appeals where "a construction of the constitution is involved" shall go to the Supreme Court direct; and (2) There is a mandatory statute that if appeals are taken to the wrong court and it is

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found or adjudged that the case was wrongly appealed to such court it shall be the duty of that court to transfer it to the proper court where it shall proceed as if originally appealed there.

Those questions were not raised in the *Parker* case.

Those questions were raised and argued in the District Court and Circuit Court of Appeals. In his decision Judge Lindley obviously relied upon the ruling in the *Mayo* case that procedural errors should not control the ultimate justice of discretion.

Counsel for petitioner suggests in his petition for certiorari that where appeal was taken to a court that had no power to pass upon a "constitutional question" and also assigned error upon other questions upon which it had power to pass, such appeal was a waiver of right to have the constitutional question passed upon, and that such waver should apply to and control the District Court when habeas corpus relief is sought.

The discussion of this question requires an examination of the Illinois Constitution of 1870, the Act creating the Appellate Court of Illinois, and the Civil Practice Act of Illinois.

There is no provision of Illinois law routing appeals of cases in which federal questions are raised as there are in some other states. So far as Illinois law goes such federal questions go with the case on its general characteristics.

We will now discuss the questions suggested.

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## SUGGESTIONS.

### I.

**Only such questions as require a constuction of some provision of the Constitution by pass the Appellate Courts.**

Opposing counsel suggest that by taking an appeal to the Appellate Court of Illinois the relator waived the right to a determination of any "constitutional questions,"—basing that assertion upon provisions of the Civil Practice Act of Illinois. That viewpoint is a misconception of the requirements of the Statute.

The Statute of Illinois does not say "constitutional questions,"—which is the lawyer's expression for short, but the Statute uses the phrase "*construction of the constitution.*" a wholly different concept than constitutional questions as commonly spoken of.

Just because a litigant says that he is being deprived of a fundamental right guaranteed to him by the constitution, does not necessarily mean that he is calling for a construction of some provision of the constitution for, in most cases, he is asking only that the constitution be enforced,—but it be obeyed,—that he be protected by its plain provisions.

And when a defendant says that the enforcement of a sentence to imprisonment will deprive him of due process of law because of lack of jurisdiction of the court to enter it, he asks only that the basic guarantee be given play.

Most portions of constitutions are self enforcing,—that is they contain basic laws, declaring certain rights, guaran-

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teeing the citizen against certain ancient evils. They are plain and need no construction. They are to be enforced as written.

The type of case here is one where a public officer finds himself between two fires; he is directed to do certain acts by an Election Board with final jurisdiction, and power to order; and then by the Superior Court was ordered to do things to the contrary,—that court usurping a jurisdiction it had not.

Obedience to the statutory election board has brought upon White imprisonment by contempt process of the Superior Court.

In the contempt proceeding White defended, and said that the court took jurisdiction where it had none; that jurisdiction in such case was given exclusively to a Statutory Election Board and thereby withdrawn from the court, and that the court invaded the executive field of government and ordered him to do things in violation of his statutory duties.

For his adherence to his statory duties performed under an oath of office, White was given a sentence of imprisonment for six months for disobeying the court's order.

White claims the sentence deprives him of due process of law under the Federal and State Constitutions, a sentence of imprisonment without jurisdiction of subject matter.

The Appellate Court of Illinois has here held his appeal to be one involving a "*constitutional question*" and that such claim is due to be taken directly from the trial court to the Supreme Court; "which," as it says, "has exclusive jurisdiction to determine *constitutional questions*" (Tr.

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Thus the Appellate Court of Illinois refused to pass upon that question of defendant's constitutional right and the refusal also of the Supreme Court of Illinois to consider the case against denied due process of law.

It is respectfully contended that the imprisonment here was inflicted without jurisdiction or power to impose it; and, although the judgment imposes a penalty without due process of law, it involves no *construction* of either Federal or State Constitutions.

The constitution of the United States is a law to be obeyed the same as any enactment; and all amendments to it are now by virtue of the Fourteenth Amendment basic laws of the States, and are to be observed by State Courts which now enforce these rights as matter of course.

The duty of the State Courts to protect litigants in their constitutional guarantees should not be permitted by the Federal Courts to be brushed aside on any fiction that they involve a construction of the constitution for they do not. It is a simple case of obedience to basic law.

In the case there was full power in the Appellate Court to decide the question of due process of law which only invoved a question of jurisdiction of the court and not a construction of a constitution.

The Appellate Court gets its jurisdiction from the Illinois Constitution of 1870 and as we read that document the jurisdiction of the Appellate Court is unlimited in any case assigned to its decision by appeal or writ of error. Section 11 of Article VI of the 1870 Constitution provides that after 1874 the Legislature might create Appellate Courts

> "to which such appeals and writs of error as the general assembly may provide may be prosecuted from

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circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court in all criminal cases, and cases in which a franchise or freehold or the validity of a statute is involved and in such other cases as may be provided by law."

That provision of the constitution does not say or infer that the jurisdiction of the Appellate Court may be limited by the legislature to *certain questions* arising upon a record. In the exercise of its jurisdiction it has all the dignity and power of the Supreme Court. It may decide every question upon the record in cases assigned to it by the legislature and the legislature has no power to limit that jurisdiction which flowed from the constitution when the court was established. The constitution did not withhold jurisdiction in any type of case. It only denied finality in criminal cases and cases involving a franchise or freehold or the validity of a statute, *i. e.*, writs of error would lie to the Supreme Court on such judgments from the Appellate Courts to the Supreme Court in such cases.

But there is no limitation upon the right to decide a constitutional question so called, or to place a construction upon the constitution. The legislature is to say what cases shall be heard on appeal or writ of error, and it assigns or designates types of litigation to it to hear.

Under the constitution it will be seen that the jurisdiction of the Appellate courts is unlimited, depending only upon specification by the legislature of the particular types of cases it might review. The legislature could have assigned to the Appellate Court the duty to pass only upon questions involving the constitution, which at that time was only a few years old, had it so desired.

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But the constitution gave the legislature no power to limit the jurisdiction of the Appellate Court, as such.

The Legislature established the Appellate Courts by "An Act to establish Appellate Courts," Approved June2, 1877 and fixed their jurisdiction by Section 8 of that Act, which is still in force (as amended) and which provides that they

> "shall have jurisdiction of all matters of appeal or writs of error from the final judgments, orders or decrees of any of the Circuit Courts, or the Superior Court of Cook County, or County Courts, or from the city courts in any suit or proceeding at law or in chancery other than criminal cases and cases involving a franchise or freehold or the validity of a statute,"

and providing in the same section that appeals and writs of error are to be taken direct to the Supreme Court "in all criminal cases and in cases involving a franchise or freehold or the validity of a statute." (Laws of 1877).

It will be noted that the Act says nothing about construction of the constitution, or cases involving the constitution, or constitutional cases, so-called. Nor does it grant any power to split up a cause of action in the Appellate Court. The jurisdiction is over the judgment orders or decrees, if it be not a criminal case, or one involving a franchise, freehold, or validity of statute. It is the power to review the judgment as an entirety that is assigned to the Appellate Court.

Obviously the Constitution placed no limit upon the *jurisdiction* of the Appellate Court and granted the Legislature no power to *limit* their jurisdiction except by designating the types of cases that shall be taken to those courts.

The Practice Act of 1877 (Approved June 2, 1877) provided that Appeals and Writs of Error in Criminal cases

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and cases in which a franchise or freehold or validity of a Statute is involved shall be taken directly to the Supreme Court in case *the party appealing* or prosecuting such writ of error *shall so elect excepting* in cases of chancery; and in chancery cases the appellant was required to file in the Supreme Court a transcript of the record including orders and decrees of the Appellate Court (Sec. 88, Chap. 110, Statutes of 1878).

In 1879 the Practice Act was amended so as to provide that "in all criminal cases, below the grade of felony, shall be taken directly to the Appellate Court; and in all criminal cases above the grade of misdemeanors, and in cases in which a franchise, freehold or the validity of a Statute or construction of the constitution is involved, and in all cases relating to revenue, or in which the state is interested as a party or otherwise, shall be taken directly to the Supreme Court." (Illinois Session Laws 1879, page 222; Murd's Rev. Stat. 1887).

The present Civil Practice Act of Illinois (Chap. 110, Sec. 75 Rev. Stat.) provides:

> "(Jurisdiction of Appellate and Supreme Courts.) 1) Appeals shall be taken directly to the Supreme Court in all cases in which a franchise or freehold or validity of a Statute or a construction of the constitution is involved, and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenues, or in which the state is interested as a party or otherwise."

The Civil Practice Act does not specify the cases to be appealed to the Appellate Court. However Section 32 of an Act to establish Appellate Courts (Chap. 37, Rev. Stat.) sets out the jurisdiction of the Appellate Courts which with

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some amendments is the same as Section 8 of the Original Act of 1877. Section 32 of the Act under which this case in the Superior Court arose reads as follows:

> "The said Appellate Courts created by this Act shall exercise Appellate jurisdiction only and have jurisdiction of all matters of appeal or writs of error from the final judgments, orders or decrees of any of the Circuit Courts, or the Superior Court of Cook County, or County Courts, or from the city courts in any suit or proceeding at law, or in chancery other than criminal cases, not misdemeanors, and casese involving a franchise or freehold or the validity of a statute. Appeals and writs of errors shall lie from the final orders, judgments or decrees of the Circuit and City Courts and from the Superior Court of Cook County, directly to the Supreme Court, in all criminal cases and in cases involving a franchise or freehold or the validity of a Statute."

It seems that the phrase "construction of the constitution" first appeared in the Practice Act of 1879 and has been retained and appears in the present Civil Practice Act. At that date the Illinois constitution of 1870 was only a few years old and construction of its provisions was an important matter and by legislature was assigned to the Supreme Court for its consideration.

Words and Phrases shows Illinois as the only state in whose cases the phrase "constitutional question" is used and cites several Illinois cases.

Cases have arisen in other jurisdictions where the phrase "construction of the constitution" is used to designate where an appeal should be taken, whether to the Appellate or Supreme Court, and it is held that the phrase in its context imports some ambiguity or uncertainty making it proper that it should be passed upon by the Supreme Court.

In *Terre Haute R. Co.* v. *Erdel,* 158 Ind. 344 it was said in a case involving a statute fixing appeals where the con-

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struction of statutes and constitutions determined the court to which to appeal should be taken. The court said:

> "Every case in which there is in question, and such question is duly presented, either the validity of a franchise, or the validity of an ordinance of a municipal corporation or the constitutionality of a statute, state or federal, or the proper construction of a statute, or the rights guaranteed by the State of Federal Constitution and such case would be otherwise unappealable . . . shall be appealable directly to the Supreme Court for the purpose of presenting that question only," "means to interpret, to elucidate, to define and declare the meaning of that which is obscure and uncertain, and can have no application to a statute in which there is nothing doubtful or ambiguous in its terms. Construction can only be employed for the discovery of the true intent and meaning of an instrument and when the language is plain there can be no construction, because there is nothing to construe."

In *Turner* v. *State*, 185 Ga. 432, 195 S. E. 431 the court had under consideration a constitutional amendment which provided that the Supreme Court should have exclusive jurisdiction to correct errors of trial courts:

> "In all cases that involve the construction of the constitution of the State of Georgia or of the United States or treaties between the United States and foreign governments; in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question."

It was held:

> "The words 'construction of the constitution' etc., as here employed, contemplate construction where the meaning of some provision of the Constitution is directly in question, and is doubtful by force of its own terms or under the decisions of the Supreme Court of the United States or of the Supreme Court of Georgia, and the provision of the constitution in which they are employed are not to be construed as

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> denying to the court of appeals jurisdiction of cases which involve mere application of unquestioned and unambiguous provisions of the constitution to a given state of facts."

To determine whether due process has been given to a litigant it is not necessary to construe the constitution of either jurisdiction, but only is it necessary to observe whether the judgment was entered with jurisdiction and whether the Fourteenth Amendment has been obeyed or applied. There is nothing to construe. The only question is one of jurisdiction,—obedience to the provisions of basic law. Jurisdiction absent, due process is denied.

In 16 C. J. S. p. 103, Sec. 50, subject constitutional law, it is said that constitutional provisions designed to safeguard individual rights such as the negative and prohibitive clauses of the Fourteenth Amendment need no construction.

And in 16 C. J. S. p. 1513, subject construction, it is said that construction can only be employed for the discovery of the true intent and meaning of an instrument and when the language is plain there can be no construction because there is nothing to construe for the word implies ambiguity and necessarily presupposes obscurity, doubt, and uncertainty.

In *United States* v. *Sprague*, 282 U. S. 716 the court said:

> "The constitution was written to be understood by the voters; its words and phrases were written in their normal, as distinguished from their technical, meaning; where the intention is clear there is no reason for construction and no use for interpolation or addition."

It is respectfully suggested that the Appellate Court either has jurisdiction over the *entire* case or none at all. It has no power to decide certain elements of the case and refuse to decide others. If the record assigns errors be-

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yond its jurisdiction to hear, it should refuse to take jurisdiction over the case as being one the legislature has not assigned to it or has withheld from it.

And here when the Appellate Court found the record that the Appeal was to the wrong court and that it had no jurisdiction it should have transferred it to the Supreme Court under Section 86 of the Civil Practice Act of Illinois.

So far as passing upon Federal questions where there has been a denial of due process of law or any other right secured by the Fourteenth Amendment the Appellate Court had ample constitutional power. By the rule as to a constitutional question being involved in the case it has always been the rule that the Appellate Court would be permitted to pass upon other than constitutional questions whereas if the rule as to jurisdiction is applied the Appellate Court could pass upon no issue in which a constitutional question were asserted for the constitution, from which the Appellate Court gets its jurisdiction does not split up an appeal into its several elements, with a right to pass on this, and a privilege to pass on that and a denial of the other. There never was, and there is not now, any jurisdiction in the legislature to direct, permit, or allow an Appellate Court to pass on some issues in a case and hold that other issues were waived; nor is there power in the Supreme Court of Illinois to decide that an appeal to the Appellate Court by a litigant waives a right to have his constitutional rights, State and Federal, passed upon. If the Appellate Court has no jurisdiction over one issue it has no jurisdiction over the case as a whole; for why should it be held that the most sacred of all rights,—those arising under the Fourteenth Amendment to the United States Constitution are waived because of some procedural error. There is no reason only the excuse of a prior erroneous decision.

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**The State has no power to waive a Federal Constitutional right for a United States citizen.**

By what right or power does a State through any of its agencies, assume to jockey a United States Citizen into a waiver of any right secured by the law of the land, the supreme law of the nation, by anything less than a conscious, definite, personal waiver upon the record.

The judicial department of Illinois is not the guardian and keeper of the sacred constitutional rights of a United States citizen and has no power, right, or authority to declare that by any procedural conduct in State Courts he has waived his rights under the Federal Constitution, while all the time he is crying out for protection of his federal rights in the proceeding.

It may be conceded that the state, through its agencies, may hold procedural conduct will waive State Constitutional rights of a State Citizen, but it is the duty of a state's agencies, particularly its judicial department, to affirmatively protect and defend, if need be, the rights of United States Citzens, entrusted through comity, to the States care. The State has no leave or license to betray the rights of a United States Citizen by deciding that a mere failure to follow State procedure is a waiver of federal constitutional rights. That is what was done in this case; and we respectfully suggest that there can be no waiver where there is no power or authority to put a United States Citizen in that position.

Here the State Court refused to pass upon the error assigned yet it split up the case, ignored his federal rights, and proceeding to imprison him upon the rights of a citizen of the State, as distinguished from those of a citizen of the United States. Those rights the Illinois Courts refused to pass upon.

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## II.

### The Statute requires transfer of a mistaken appeal to the proper court.

Section 86 of the Illinois Civil Practice Act provides for the transfer of cases to the proper court where it is adjudged that it is wrongly appealed to such court and that applies to the Appellate Court. The law reads:

> "Sec. 86. (Transfer of case appealed to wrong court). Where an appeal is taken to either the Superior or Appellate Court and it is found or adjudged that the case was wrongly appealed to such court, it shall be the duty of such court to direct the clerk to transmit the transcript and all files therein with the order of transfer to the Clerk of the proper court. On the receipt of such record the Clerk shall at once file the same and the case shall then proceed as if the same had been taken there from the inferior court. * * *"

It is a regular procedure at every term of the Supreme Court of Illinois for the Supreme Court to transfer cases from that court to the Appellate Court where the court in looking into the record has held that there is no franchise, no freehold, or constitutional question involved. Every volume has its cases; and the Statute provides for that procedure; and it is religiously followed by that court.

Strange as it may seem the Supreme Court recognizes and applies this Statute in all cases taken to that court, but if an unfortunate litigant charged with some offense, and with imprisonment awaiting him, chances to appeal to the Appellate Court and raises a question of his constitutional rights even under the Federal Constitution the Appellate Court refuses to pass upon the most sacred of all rights and holds them waived by a procedural mistake and the Supreme Court affirms that view. Why should there

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be one rule in cases appealed to the Supreme Court and a different one for the Appellate Court: and that in the face of the Statute intended to relieve litigants from procedural errors, and in face of the provsion that the Appellate Court is mentioned in the Section.

In this case the effect of the application of the Illinois rule has been to deny and defeat the dominant rights of the United States citizen instead of protecting and promoting those rights.

The State has no such power over citizens of the United States as to say that their paramount rights under the United States Constituion are waived by a procedural error; and if they do, it is the duty of the United States Courts to come to their rescue when they are found imprisoned upon the arbitrary action of State agencies by their refusal to adjudicate their rights.

Here the relator finds himself imprisoned and unable to assert his paramount rights under the Federal Constitution because the judicial agencies of the State refuse to recognize them because of a supposed procedural error.

Obviously the Appellate Court continues to rule that if a case involving a federal right under the Fourteenth Amendment is taken to that court, the constitutional point is still waived notwithstanding Section 86 of the Civil Practice Act.

**Transfer of wrongly appealed cases is mandatory.**

The Civil Practice Act provides that when the court finds or adjudges that the case has been wrongly appealed to that court "it shall be the duty" of such court to order the record transmitted to the proper court where it shall proceed as if the cause had been taken there originally.

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Contempt is a civil matter and this case was appealed under the Civil Practice Act and that provision is applicable here.

It is obvious that that statute was intended to cure the very evil here discussed, that by appealing to the Appellate Court constitutional questions were waived. For why should the Act say that the case should be then tried as if it had originally been appealed to the right court; for if it were a constitutional case and the Appellate Court transferred it to the Supreme Court there would be a constitutional question to be decided when the Supreme Court should have received it, were that not so.

That Statute does not require that counsel should object to jurisdiction or move to transfer the case; it makes it the duty of the court to do it when it shall find or adjudge the fact of wrong appeal. Here the Appellate Court found that the case had a constitutional point in it and held in its opinion that it would not decide the point for the reason that constitutional cases should go to the Supreme Court yet the Appellate Court did not transfer the case but held it for the purpose of passing upon other errors assigned.

We respectfully suggest that by Section 86 of the Civil Practice Act the legislature put the appeal procedure upon the ground the constitution intended that no right of appeal should be split up and to cure the practice of the Appellate Court in deciding cases wrongly appealed there, yet omitting to decide the constitutional question, holding it waived. The case should have been transferred when the Appellate Court found and decided the case was in the wrong court.

In the case at bar had the Appellate Court transferred the case to the Supreme Court as was its duty under its finding the Federal Constitutional point would not have

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been held waived. But the failure to transfer and holding the point lost did not destroy the federal constitutional point and the right to have it considered somewhere. The first place a hearing was obtained was in the District Court in this case. Both Illinois Courts refused to consider it.

In the *Parker* case, Vol. 92—No. 13, page 685 Law Ed. Advance Opinions it does not appear that it was pointed out to the court that the practice of passing upon parts of a record in the Appellate Court and refusing to pass on the constitutional questions involved is a violation of the Illinois constitution and statute. Where the case was taken for one purpose it should have retained for all purposes or it should have been transferred under Section 86 of the Civil Practice Act to the Supreme Court. The Act transferring cases to the right court where wrongly appealed was passed, no doubt, to save such situations as the waiver of constitutional rights by errors in procedure.

In the *Parker* case this Court said (P. 687, Vol. 92—No. 13, Law Ed. Adv.):

> "Where federal rights are involved, it is, of course, for this court finally to determine whether the failure to follow the procedure designed by a State for their protection constitutes a waiver of them."

And it is for this court to say whether the refusal of the Appellate Court to decide the question of due process or failure to transfer the cause to the Supreme Court and that Court's denial of appeal deprived White of due process of law.

A citizen of the United States is a creature of circumstance when cast in a suit in the State of Illinois. If perchance, he appeals to the wrong court, he is held to have waived his federal constitutional rights regardless of how timely he asserted them or how earnestly he may

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have fought for them, and, notwithstanding the Statute says if the appeal is to the wrong Appellate tribunal, it shall be sent by that court to the proper tribunal, the error in procedure is said to drop the federal constitutional rights by the wayside. In other words he is held to have waived his suposedly great constitutonal rights by that little error notwithstanding his actual intention to protect them, and that his appeal is for the sole purpose of protecting them.

And notwithstanding those constitutional rights are guaranteed by the basic law of the land they must be fought for all over again in the courts and with the courts; and if there be a miscue in procedure everything is lost.

It seems that the whole attitude of the State courts is to defeat constitutional rights instead of advancing them and protecting them. This record so indicates.

The balance wheel of protection is and should be the United States courts and they should come to the rescue of the United States citizen who has lost his consttutional rights in the maze of State court procedure or technique.

The point is that the United States citizen should not have to depend for his liberty on a construction by a State court of a law which involves his federal rights, *i.e.*, in the last analysis, he should have a right to apply to the Federal courts to protect his real rights regardless of the errors of the State courts, or its peculiar procedure.

Here all that was asked by White in his case was that the basic laws in the federal constitution be obeyed and applied. That is in no sense asking for a construction of the constitution, nor is it a constitutional question; it is only a matter of obeying the Fourteenth Amendment which now is basic law of the States as well as the United States.

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For State purposes the rule of decision on the matter of the route of appeal and waiving a State constitutional point if a slip up is made in the effort to appeal, ought not concern the United States citizen, but, for federal purposes, and a citizen of the United States the rule of decision should be one that comports with federal rights and which recognizes that equal protection of laws requires that a reasonable construction be placed on procedural errors. State court procedures should not be permitted to destroy or deny the rights of the United States citizen to the protection of his federal constitutional rights.

The rule should be that court procedure of a State cannot work a forfeiture or waiver of the constitutional rights of a United States citizen. Constitutional rights are not actually waived unless intentionally waived and that should be the rule to be applied for uniformity throughout the United States.

## III.

**Comity does not respect a void judgment that holds a citizen in prison. The constitutional guaranty is the highest in order of respect. Comity begins at home.**

The rule that requires that the United States courts pause before discharging a citizen of the United States when held under state process, is said to rest upon the doctrine of comity; but we suggest that the guarantee of due process of law stands above the courteous relationship of two systems of courts.

Here the Court had before it a citizen of the United States who was being held and imprisoned under void State process, and also the law enforcing agency of the State of Illinois stood urging the continuation of that imprisonment. The Judge could not believe that the doctrine of comity required him to remand petitioner to imprisonment upon

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void process where the acredited law enforcing officer of the State stood before him insistng that the imprisonment must continue. Rather, it would seem that the Judge felt that comity, like charity, begins at home, and that the doctrine required that the State of Illinois should first respect and observe the basic law of the land before it might insist that its judgment before the Court be respected on the ground of comity.

Comity does not go to the absurd length of requiring that one judicial system should respect the void pronouncements of the other. On the contrary, the rule is that a void judgment may be attacked anywhere, any time, under any circumstances, collaterally or directly, in court or out, it matters not; any time before final judgment is entered upon the record.

Comity respects valid judgments, but never void judgments.

Why should courts stand on ceremony when a United States citizen, admittedly wrongfully imprisoned, stands waiting at the door of the cell, when one stroke of the pen will free him?

## IV.

### Having granted certiorari relator's cause should be heard before the bar of the Court.

Here the Superior Court arbitrarily and without jurisdiction imprisoned in violation of relator's right to due process. The Appellate Court of Illinois refused to consider relator's right to due process. The Supreme Court of Illinois did likewise. The first court in which relator got a hearing on that question was the District Court the judgment of which the Court of Appeals affirmed.

By its order here this Court has decided the cause without opportunity to be heard upon the merits of the case;

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and it is respectfully urged that this cause should not have been reversed without a hearing upon relator's rights to be free from an illegal imprisonment, and should now be reinstated upon the docket and relator be given an opportunity to be heard before the bar of the court; otherwise the judgment of the Court of Appeals should be affirmed. The claim of due process of law here made should not be disposed of as of course without hearing. Relator suggests that such disposition again denies due process of law.

Wherefore petitioner by his counsel respectfully prays the Court to reconsider the record in light of the foregoing suggestions to the end that the petition for certiorari be denied or in the alternative that the order reversing the judgment of the Court of Appeals be set aside and the cause be heard upon its merits; or in the alternative that this petition for rehearing be set for oral argument under direction of the court.

Respectfully submitted,

JOSEPH I. BULGER,
ODE L. RANKIN,
*Counsel for Respondent.*

**Certificate of Counsel.**

The undersigned as counsel for petitioner, Ralph E. White in the above and foregoing Petition for Rehearing and proceeding, do hereby certify that the foregoing Petition is presented in good faith. I further certify that the several points presented are worthy of consideration and that the Petition is not presented for delay.

JOSEPH I. BULGER,
ODE L. RANKIN,
*Counsel for Petitioner.*

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No. 199. WALSH, SHERIFF, *v.* UNITED STATES EX REL. WHITE. On petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit. *Per Curiam:* The petition for writ of certiorari is granted. The judgment of the Court of Appeals is reversed and the cause is remanded to the District Court with directions to discharge the writ of habeas corpus and remand the re-

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spondent to custody. *John S. Boyle* for petitioner. *Joseph I. Bulger* and *Ode L. Rankin* for respondent. Reported below: 174 F. 2d 49.